Chapter 1

Introduction to Motion Practice

1-1 WHAT IS A MOTION?

"A motion is an application for an order,"[1] i.e., a request to the court for judicial relief of some kind. A motion has three principal features.

First, a motion is made by one or more persons. Although typically the person making a motion is a party to an action, a motion also may be made by a non-party, such as an intervenor, or a third party seeking to quash a subpoena. The party making the motion is called the moving party or the movant. The party responding to the motion is called the respondent.

Second, a motion asks the court for relief, which is embodied in a judicial order. For example, the motion may seek an order dismissing all or part of the case, an order concerning discovery, a temporary restraining order, a preliminary injunction, or an order for a new trial.

Third, a motion is an "application" to the court. The application should explain why the court should grant the relief requested. A motion should answer six basic questions:

1. Who is the moving party?
2. What relief does the moving party seek?
3. Against whom does the moving party seek such relief?

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[1] CPLR 2211.

4. What papers is the moving party submitting in support of the motion?
5. What facts entitle the moving party to the relief requested?
6. What legal authority entitles the moving party to the relief requested?

1-2 SOURCES OF RULES THAT GOVERN NEW YORK MOTION PRACTICE

Five main bodies of rules govern general New York motion practice. A practitioner should consult each of these sources to ensure compliance with all governing rules.

1-2:1 CPLR

The main statutory body of law governing New York motion practice is the New York Civil Practice Law and Rules, more commonly known as the CPLR. The CPLR governs procedure in civil judicial proceedings in all courts of the state and before all judges, except as otherwise provided by a specific statute.[2] This includes the Supreme Court and county court, as well as—to the extent not provided otherwise by statute—city court,[3] New York City civil court,[4] district court,[5] surrogate's court,[6] and family court.[7]

1-2:2 Uniform Rules

The Chief Administrator of the Courts has enacted Uniform Rules for the New York State Trial Courts, more commonly known as the Uniform Rules. These include: Uniform Civil Rules for the Supreme Court and the County Court;[8] Uniform Rules for the

2. CPLR 101.
3. N.Y. Uniform City Ct. Act § 1001.
4. N.Y. City Civ. Ct. Act § 1001.
5. N.Y. Uniform Dist. Ct. Act § 1001.
6. N.Y. Surrogate's Court Procedure Act § 102.
7. N.Y. Family Court Act § 165(a).
8. Uniform Rule 202.1 et seq.

Family Court;[9] Uniform Rules for the Court of Claims;[10] Uniform Rules of the Surrogate's Court;[11] Uniform Rules for the New York City Civil Court;[12] Uniform Civil Rules for the City Courts Outside of New York City;[13] Uniform Civil Rules for the District Courts;[14] and Uniform Civil Rules for the Justice Courts.[15]

1-2:3 Rules of the Commercial Division

As part of the Uniform Rules for the New York State Trial Courts, the Chief Administrator has promulgated specific additional Rules of the Commercial Division of the Supreme Court.[16]

1-2:4 Rules of Individual Courts

Many individual courts have promulgated local rules that concern motion practice. These rules may address issues such as page limits, motion days, and how to file papers with the court, including ex parte applications and orders to show cause. Individual court rules may be located via the website of the New York Unified Court System, which contains links to the web pages for individual courts throughout New York State.[17]

1-2:5 Judges' Rules

Individual judges, too, may adopt rules that address motion practice in their courtrooms. Such rules may be found via the website of the New York Unified Court System, which contains links to the web pages for individual courts throughout New York State, on which rules of the judges of that court may be found.[18]

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9. Uniform Rule 205.1 et seq.
10. Uniform Rule 206.1 et seq.
11. Uniform Rule 207.1 et seq.
12. Uniform Rule 208.1 et seq.
13. Uniform Rule 210.1 et seq.
14. Uniform Rule 212.1 et seq.
15. Uniform Rule 214.1 et seq.
16. Uniform Rule 202.70.
17. *See* New York Unified Court System, *available at* https://www.nycourts.gov/courts/index.shtml (last visited May 7, 2024).
18. *See* New York Unified Court System, *available at* http://www.nycourts.gov/courts/index.shtml (last visited May 7, 2024).

1-3 TYPES OF MOTIONS

Formal motions may be made: (1) by notice of motion; (2) by order to show cause; or (3) ex parte. The CPLR refers to motions made by notice of motion or by order to show cause as motions made "on notice."[19] These motions give all other parties advance notice of the date when the motion will be heard and an opportunity to submit an opposition or other response before that date. In an ex parte motion, by contrast, a court may grant relief without other parties receiving advance notice of the motion or an opportunity to be heard.[20] On occasion, motions are made orally to the judge when the parties appear in court, and something occurs in the judge's presence that prompts a party to seek relief.

1-3:1 Motions Made by Notice of Motion

A notice of motion is a short document that tells all other parties to the action the time and place where the motion will be made, the supporting papers on which the motion is based, the relief sought, and the grounds of the motion.[21] A motion made by notice of motion is initiated by service of the notice of motion and all supporting papers on the party or parties against whom the motion is directed and any other parties to the action.[22] Generally, a motion made in this fashion, so long as it complies with the time limits otherwise applicable to the motion, can be made at any time without prior leave of court.[23]

1-3:2 Motions by Order to Show Cause

Unlike a notice of motion, a motion by order to show cause is first presented to the court, which directs the time and method of service of the motion papers.[24] A motion made by order to show cause begins as an ex parte application to the court to set a date on which the opposing party must appear and "show cause" why

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19. CPLR 2211.

20. *See, e.g.*, CPLR 6211(a) (attachment), 6313(a) (temporary restraining order).

21. CPLR 2214(a).

22. CPLR 2211 and Uniform Rule 202.8(c). Procedural aspects of motions made by notice of motion are discussed in greater detail in Chapter 2, below.

23. Note that in the Commercial Division certain motions require pre-motion conferences. *See* Uniform Rule 202.70(g), Rule 24 of the Rules of the Commercial Division of the Supreme Court, discussed in § 1.5, below.

24. CPLR 2214(d).

the court should not grant the moving party certain relief. Parties ordinarily move by order to show cause either when they need to make a motion for relief within a shorter time frame than CPLR 2214 provides for motions made by notice of motion, or when they otherwise require judicial relief on an expedited basis.[25]

1-3:3 Ex Parte Motions

An ex parte motion is made without giving prior notice to other parties. The court may hear argument, whether oral or written, from the moving party alone. Ex parte motions are reserved for extraordinary situations, where giving notice of the motion to other parties might jeopardize some legitimate interest of the movant, such as when the movant requires interim, emergency relief to preserve the status quo. Even when a motion is initially presented ex parte, the court may give the party against whom the motion is made an opportunity to oppose or respond to the motion before the court issues its order.[26]

1-4 WHERE ARE MOTIONS MADE?

Motions in Supreme Court normally are made in the court where the action is pending.[27] If a judge has been assigned, the motion is made to that judge.[28] If no judge has been assigned, the motion is made to the court, together with a simultaneous Request for Judicial Intervention.[29] There are some exceptions, however.

1-4:1 Motions Made by Notice of Motion

The CPLR nominally permits a motion made in Supreme Court to be noticed to be heard either in the county where the action is pending or in an adjoining county.[30] However, as a practical matter, the Rules of the Chief Administrator require that all motions—with limited exceptions pertaining to motions to change

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25. Orders to show cause are discussed in greater detail in Chapter 2, § 2-8, below.

26. *See, e.g.*, Uniform Rule 202.8-e. Ex parte motions are discussed in greater detail in Chapter 2, § 2-8, below.

27. Uniform Rule 202.8.

28. Uniform Rule 202.8(a).

29. Uniform Rule 202.8(b). The Request for Judicial Intervention (described in Uniform Rule 202.6) is discussed in Chapter 2, § 2-3:5, below.

30. CPLR 2212(a).

venue, orders to show cause, and ex parte motions—must be made in the court where the action is pending, to the assigned judge.[31] Although motions are addressed to the assigned judge, some courts have a separate motion support office that acts as a clearinghouse, to which motion papers should be submitted in the first instance. For example, the Supreme Court of New York County requires all motions (other than those made by order to show cause) to be made returnable to Room 130, the Motion Support Office.[32]

1-4:2 Motions to Change Venue

Motions to change venue are an exception to the general rule that motions should be made in the court where the action is pending. If (and only if) a plaintiff does not serve a timely response to the defendant's pre-answer written demand to change venue, the defendant may make the motion in the defendant's own preferred venue.[33]

1-4:3 Motions Made by Order to Show Cause

Motions made by order to show cause should be heard by the assigned judge or, if none has been assigned, in the court where the action is pending.[34] CPLR 2212(a), however, permits a motion by order to show cause to be heard by the assigned judge "out of court." That is, the motion need not be heard at a regular motion term of the court, but instead may be heard at such time and place as the judge who signs the order directs. This gives judges greater flexibility in hearing motions brought on by order to show cause in exigent circumstances where the normal motion calendar may be inadequate.

Even in the most extreme circumstances, however, New York State judges may wield judicial power only within the territorial confines of the state. For example, during a takeover battle between

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31. Uniform Rule 202.8(a) ("All motions shall be returnable before the assigned judge."); Uniform Rule 202.8(b) ("If a case has not been assigned to a judge, the motion shall be made returnable before the court."). Uniform Rule 202.8 takes precedence over CPLR 2212(a) pursuant to CPLR 2212(d), which provides: "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 . . . ."

32. General Rule 13(a) of the Rules of the Justices, New York County Supreme Court, Civil Branch.

33. CPLR 511(b), discussed in Chapter 7, § 7-1:2, below.

34. Uniform Rule 202.8.

Citigroup and Wells Fargo to acquire Wachovia Corporation, Justice Ramos of the Supreme Court, New York County, heard argument in his home in Connecticut on Saturday, October 4, 2008, and then issued, from his home in Connecticut, an order that effectively stayed Wells Fargo's acquisition pending a hearing. On Sunday, October 5, 2008, however, Justice McGuire of the Appellate Division, First Department, ruling from the courthouse in New York City, overturned Justice Ramos's decision, partly on the grounds that a judge of the State of New York does not have the power to issue an order from outside New York State.[35]

1-4:4 Ex Parte Motions

An ex parte motion normally should be heard by the assigned judge or, if none has been assigned, in the court where the action is pending.[36] However, CPLR 2212(b) provides that an ex parte motion may be made "to a justice out of court in any county of the state." In theory, the movant can approach any judge in any county of New York for an ex parte order. Greater flexibility exists because the adversary has no right to be heard in an ex parte proceeding, and therefore is not inconvenienced if the motion—which may involve an emergency application—is heard in a court or locale other than the court where the action is pending, subject to the restriction that any ex parte relief ordered by the judge must issue within the territorial confines of New York State.[37]

By giving the applicant the option to go to any judge in any county of the State of New York, CPLR 2212(b) invites forum-shopping. Uniform Rule 202.7(e), however, limits that forum-shopping opportunity by requiring that, if the motion is made in any court other than the one where the action is pending, the judge receiving the application should refer it back to the court where the action is pending, unless that judge determines that there are exigent circumstances that require an immediate ruling on the relief requested.[38]

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35. *See* Eric Dash, *Weekend Legal Frenzy Between Citigroup and Wells Fargo for Wachovia*, N.Y. Times, Oct. 5, 2008, at B1.

36. Uniform Rule 202.8.

37. *See* § 1-4:3, above.

38. Uniform Rule 202.7(e) provides: "Ex parte motions submitted to a judge outside of the county where the underlying action is venued or will be venued shall be referred to the

1-4:5 Motions in County Court

Because county courts have fewer judges and more limited schedules, the CPLR provides greater flexibility for motions in a county court.

Motions by notice of motion or otherwise normally should be heard by the assigned judge in the court where the action is pending.[39] However, if no motion term is being held and no county judge is otherwise available within the county, the motion may be noticed to be heard before a motion term of the Supreme Court.[40] If such a motion is brought by order to show cause, moreover, the motion can be heard by the Supreme Court justice out of court, either in the judicial district where the action is triable or in a county adjoining the county where the action is triable.[41] The foregoing exceptions do not apply to dispositive motions (i.e., motions to dismiss under CPLR 3211 and motions for summary judgment under CPLR 3212) or motions for a new trial under CPLR article 44, which can be heard only in the county court where the action is pending.[42]

An ex parte motion may be made either in a motion term in the county court where the action is pending, or out of court before any county judge in any county in the state.[43]

1-5 PRIOR JUDICIAL REVIEW AND PRE-MOTION CONFERENCES

Courts cannot require parties to seek judicial approval prior to making a motion.[44] However, courts can set reasonable pre-motion procedures that are designed to encourage informal resolution of disputes among the parties. For example, Uniform Rule 202-f(a) instructs parties to seek to resolve discovery disputes through

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appropriate court in the county of venue unless the judge determines that the urgency of the motion requires immediate determination."

39. Uniform Rule 202.8.

40. CPLR 2213(b).

41. CPLR 2213(b).

42. CPLR 2213(b).

43. CPLR 2213(a).

44. *See Hochberg v. Davis*, 171 A.D.2d 192, 575 N.Y.S.2d 311 (1st Dep't 1991). *See also Goldheart Int'l Ltd. v. Vulcan Constr. Corp.*, 124 A.D.2d 507, 508 N.Y.S.2d 182 (1st Dep't 1986) (holding that the Supreme Court may not refuse to entertain a motion for summary judgment until discovery is complete).

"informal procedures" such as court conferences, rather than motion practices, to the maximum extent possible, and individual judges as well may so require.[45]

Moreover, except as otherwise provided by the rules of the relevant Commercial Division judge, parties in the Commercial Division must request a pre-motion conference in all motions other than (1) discovery motions (which are governed by a separate commercial part rule), (2) motions to dismiss, summary judgment, or summary judgment in lieu of complaint under CPLR 3211, 3212, or 3213 that are made either at the time of the filing of the Request for Judicial Intervention, or after discovery is complete, or (3) motions to be relieved as counsel, for pro hac vice admission, for reargument or in limine.[46] Where this rule applies, the requesting party must submit a two-page letter, served on all other parties in the action, that outlines the issues that are in dispute.[47] During the conference, the court will attempt to resolve the issue; if it cannot, then the parties must set a briefing schedule.[48] Any subsequent motion or order to show cause (and any cross-motion) must state that the moving (or cross-moving) party has complied with the rule; if there has not been compliance, the court may hold a motion in abeyance pending a conference.[49] However, a Commercial Division judge cannot simply strike a non-compliant motion from the calendar; the judge must instead conference the motion promptly and, if there is no resolution, decide the motion.[50]

1-6 MOTIONS GRANTED ON DEFAULT

If no opposition is offered to a motion, then the court may grant the motion on default. The losing party has no right of

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45. *See, e.g.*, *Fraser v. Roberts*, 73 Misc. 3d 1229(A), 155 N.Y.S.3d 542 (Table), 2021 WL 5858622, at *2 (N.Y. Sup., Bronx Cnty. Dec. 1, 2021) (denying cross motion to compel discovery where the movant failed first to seek an informal resolution of any discovery disputes, including a court conference).

46. Uniform Rule 202.70, Rule 24(b) of the Rules of the Commercial Division.

47. Uniform Rule 202.70, Rule 24(c) of the Rules of the Commercial Division.

48. Uniform Rule 202.70, Rule 24(d), (e), (f) of the Rules of the Commercial Division.

49. Uniform Rule 202.70, Rule 24(a), (g) of the Rules of the Commercial Division.

50. *See Briarpatch Ltd., L.P. v. Briarpatch Film Corp.*, 68 A.D.3d 520, 891 N.Y.S.2d 352 (1st Dep't 2009). *See also Costigan & Co., P.C. v. Costigan*, 304 A.D.2d 464, 758 N.Y.S.2d 312 (1st Dep't 2003) (holding that a court cannot refuse to decide a motion based on non-compliance with Rule 24 of the Rules of the Commercial Division).

direct appeal from a motion granted upon default.[51] The proper procedure for addressing an order granted on default is to move to vacate the order under CPLR 5015, based on one of the grounds set forth in that statute, and, if that motion is denied, to take an appeal from the denial of that motion.[52]

1-7 WITHDRAWING A MOTION

The moving party has an unconditional right to withdraw a motion any time before the motion is submitted to the court.[53] "Submission" means presentation of all or part of the motion to the court for consideration, which occurs either when the movant submits the motion papers to the clerk of the court after the call of the case on the return day or when the movant begins arguing the motion to the court.[54]

Once a motion has been submitted, it may be withdrawn only upon consent of the opposing party, or—if the opposing party objects—with permission of the court, on such terms as the court may impose.[55]

1-8 FORM OF MOTION PAPERS

Motion papers must conform to a number of requirements, including the following:

> (a) All papers served or filed must be written in black ink on durable, white paper that, except

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51. *See* CPLR 5511 ("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*.") (emphasis added).

52. *See, e.g.*, *Smith v. Richards*, 286 A.D.2d 393, 393, 728 N.Y.S.2d 713, 713-14 (2d Dep't 2001) ("No appeal lies from an order made upon the default of the appealing party. The proper procedure is for that party to move to vacate his or her default and, if necessary, appeal from the order deciding that motion.") (citations omitted); *Shabazz v. Blackmon*, 274 A.D.2d 770, 771, 710 N.Y.S.2d 735, 736 (3d Dep't 2000) ("It is well settled that 'a party cannot appeal from an order entered upon default, the proper procedure being to move to vacate the default and, if necessary, appeal from the denial of that motion.'") (citation omitted), *leave to appeal dismissed*, 95 N.Y.2d 946, 722 N.Y.S.2d 466 (2000). *Accord Ward v. Saporito*, 160 A.D.3d 653, 654, 73 N.Y.S.3d 435 (2d Dep't 2018).

53. *See Caplash v. Rochester Oral & Maxillofacial Surgery Assocs., LLC*, 48 A.D.3d 1139, 851 N.Y.S.2d 769 (4th Dep't 2008); *Leader v. Leader*, 8 Misc. 2d 1015, 166 N.Y.S.2d 784 (N.Y. Sup., Kings Cnty. 1957); *Marsh v. Marsh*, 63 N.Y.S.2d 42 (N.Y. Sup., Nassau Cnty. 1946).

54. *See Wallace v. Ford*, 44 Misc. 2d 313, 253 N.Y.S.2d 608 (N.Y. Sup., Erie Cnty. 1964); *Marsh v. Marsh*, 63 N.Y.S.2d 42 (N.Y. Sup., Nassau Cnty. 1946).

55. *See D'Addario v. McNab*, 73 Misc. 2d 59, 342 N.Y.S.2d 342 (N.Y. Sup., Suffolk Cnty. 1973); *Wallace v. Ford*, 44 Misc. 2d 313, 253 N.Y.S.2d 608 (N.Y. Sup., Erie Cnty. 1964).

for oversize exhibits, is eight and one-half by eleven inches in size, with the signatory's name printed below his or her signature on signed papers.[56] Papers should be typewritten, single-sided, double-spaced (apart from block quotations and address blocks, which may be single-spaced) and have at least one-inch margins.[57]

(b) All papers must be in English; an affidavit or exhibit in a foreign language must be accompanied by (1) a translation and (2) an affidavit stating the translator's qualifications and certifying the accuracy of the translation.[58]

(c) All papers must contain the caption identifying the name of the court, the venue, the title of the action, the index number assigned (placed to the right of the caption), and the assigned judge, as well as the nature of the paper.[59] If the paper has a cover page (e.g., a brief), the caption and the nature of the paper should appear on both the cover page and the first page.[60]

(d) All papers must bear the name, address, and telephone number of the attorney for the party serving or filing the paper or, in the case of a party

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56. CPLR 2101(a).

57. Uniform Rule 202.5(a)(1).

58. CPLR 2101(b). *See also Testa v. Testa*, 181 A.D.3d 846, 848, 118 N.Y.S.3d 413, 414 (2d Dep't 2020) (disregarding affidavits from the defendant, who could not read or write in English and was fluent only in Sicilian, that were "not prepared in accordance with the requirements of CPLR 2101(b)"); *Welenc v. Bd. of Dirs. of Polish & Slavic Fed. Credit Union*, 160 A.D.3d 683, 684, 74 N.Y.S.3d 294, 296 (2d Dep't) (reversing grant of summary judgment where the movant failed to supply, in connection with translation of Polish document, "an affidavit by the translator stating the translator's qualifications and that the translation was accurate"), *leave to appeal denied*, 32 N.Y.3d 904, 84 N.Y.S.3d 858 (2018); *Rosenberg v. Piller*, 116 A.D.3d 1023, 1025-26, 985 N.Y.S.2d 250, 252 (2d Dep't 2014) (disregarding translation of foreign language agreement where "the name and qualifications of [the] translator were not provided"). Procedural requirements for foreign language affidavits and affidavits submitted by non-English speakers are discussed in Chapter 2, § 2-3:2.3, below.

59. CPLR 2101(c); Uniform Rule 202.5(a).

60. Uniform Rule 202.5(a)(1).

appearing without an attorney, the name, address and telephone number of that party.[61]

(e) Each electronically-submitted memorandum of law, affidavit and affirmation, exceeding 4,500 words and prepared using computer software, must include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.[62]

(f) Except where an original is required, copies of papers may be served or filed.[63]

(g) Defects in form should be disregarded by the court if no substantial right of a party is prejudiced, and leave to correct such defects should be freely given.[64] Defects in form are waived unless the receiving party returns the paper to the party serving it within 15 days of receipt together with a statement of the particular objections as to form.[65]

(h) Electronically served papers must be of such form that, if printed out by the receiving party, they will conform to requirements (a) through (d) above.[66]

(i) Confidential personal information must be redacted, whether or not a sealing order has been obtained, including: (i) Social Security numbers, taxpayer identification numbers, and employer identification numbers, except for the last four digits thereof; (ii) an individual's date of birth, except for the year; (iii) the full name of a minor, except the minor's initials; (iv) any financial account number, such as a credit card number, bank account number, or investment account

61. CPLR 2101(d).
62. Uniform Rule 202.5(a)(2).
63. CPLR 2101(e).
64. CPLR 2101(f).
65. CPLR 2101(f).
66. CPLR 2101(g).

number, except for the last four digits thereof; and (v) any papers which, if they had been filed in a matrimonial action, would be confidential under Domestic Relations Law § 235 or contain information that is subject to a sealing order in such an action.[67]

In the Commercial Division, the following additional rules apply:

(a) Unless otherwise directed by the Court or provided in the Court's individual rules, all text in briefs and affidavits, including footnotes, shall use proportionally spaced 12-point serif typeface.[68]

(b) Any electronically-filed brief and, where appropriate, affidavit or affirmation must include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.[69]

(c) Each electronically brief or other document that cites to another document previously filed with NYSCEF must include a hyperlink to the NYSCEF docket entry for the cited document enabling access to the cited document through the hyperlink (unless the document is already accessible through a book mark); however, hyperlinks may not provide access to documents filed under seal or otherwise not in the public record.[70]

(d) If the Court so directs, all briefs must include hyperlinks to cited court decisions, statutes, rules, regulations, treatises, and other legal authorities in either legal research databases to which the Court has access or in state or federal government websites. If the Court does not require

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67. Uniform Rule 202.5(e).

68. Uniform Rule 202.70(g), Rule 6(a) of the Rules of the Commercial Division of the Supreme Court.

69. Uniform Rule 202.70(g), Rule 6(a) of the Rules of the Commercial Division of the Supreme Court.

70. Uniform Rule 202.70, Rule 6(c) of the Rules of the Commercial Division of the Supreme Court.

such hyperlinking, parties are nonetheless encouraged to hyperlink such citations unless otherwise directed by the Court.[71]

(e) Responsive pleadings must interlineate each allegation of the pleading that is being responded to and preserve the contents and numbering of that pleading.[72]

1-9 PAGE LIMITS

Neither the CPLR nor the Uniform Rules set page limits. For cases filed in the Supreme Court, both in the non-Commercial parts and in the Commercial Division, however, unless otherwise provided by the court, moving briefs and opposition briefs cannot exceed 7,000 words, reply briefs cannot exceed 4,200 words, and affidavits or affirmations cannot exceed 7,000 words. The word count limit excludes the caption, table of contents, table of authorities, and signature block. Each such document must append a certification of counsel stating the number of words in the document and that it complies with the word limit, for which the certifying counsel may rely upon the word count of the word processing system used to prepare the document.[73]

The court may, upon oral or letter application upon notice of all parties, permit submission of oversize papers, which must contain an appropriate certification of compliance with the applicable word limit.[74] A party that submits an overlength brief or affidavit, without leave of court, runs the risk that the submission will be stricken or go unread, although the court may choose to accept

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71. Uniform Rule 202.70, Rule 6(c)(1) of the Rules of the Commercial Division of the Supreme Court.

72. Uniform Rule 202.70(g), Rule 6(d)(1) of the Rules of the Commercial Division of the Supreme Court.

73. Uniform Rule 202.8-b; Uniform Rule 202.70, Rule 17 of the Rules of the Commercial Division of the Supreme Court. Some courts have held that the lack of such a certificate is a non-prejudicial technical defect. But the lack of a certificate of compliance is a nonprejudicial technical defect. *See, e.g.*, *315 W. 55th Owners Corp. v. Rainbow Spa 23 Inc.*, 81 Misc. 3d 1204(A), 199 N.Y.S.3d 441 (Table), 2023 WL 8044335, at *4 n.7 (N.Y. Sup., N.Y. Cnty. Nov. 20, 2023).

74. Uniform Rule 202.8-b(d).

the papers or direct the party to refile papers that comply with the applicable limit.[75]

1-10 DECISIONS, ORDERS AND APPEALABLE PAPER

Courts should render orders on motions relating to provisional remedies (attachments, preliminary injunctions, notices of pendency) within 20 days, and on all other motions within 60 days, after the motion is submitted for decision.[76] If a court unduly delays (or refuses) deciding a motion, a party may submit a mandamus petition to the relevant appellate court to compel the lower court to determine the motion.[77]

An order determining a motion must be in writing, be signed by the judge or bear the judge's initials, state the court to which the judge belongs and the date and place of signature, recite the papers used on the motion, and give the determination in such detail as the judge deems proper.[78] A "so-ordered" transcript constitutes an appealable paper.[79]

The Second Department explained the difference between an "order," a "decision," and a "ruling" in *Charalabidis v. Elnagar* as follows.[80] A decision resolves an issue on its merits, whereas an order implements a decision by requiring a party to act or refrain from acting consistent with the decision. A ruling is a determination

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75. *See, e.g.*, *Walters v. Sanchez*, 2021 WL 5044280, at *2 (Sup. Ct. Bronx Cnty. Sept. 8, 2021) (denying motion without prejudice to renew upon the submission of proper papers); *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, 39 Misc. 3d 1220(A) (Table), 2013 WL 1845588, at *2 n.4 (N.Y. Sup., N.Y. Cnty. Apr. 29, 2013) ("[a]ny overlength memoranda filed with subsequent motions will not be considered"); *Reilly Green Mtn. Platform Tennis v. Cortese*, 28 Misc. 3d 1234(A) 960 N.Y.S.2d 341 (Table), 2007 WL 7263362, at *8 n.6 (N.Y. Sup., Westchester Cnty. Nov. 14, 2007) (noting that the court struck the defendants' original 41-page brief and ordered the defendants to submit a brief limited to 25 pages). *See also DiPizio Constr. Co., Inc. v. Erie Canal Harbor Dev. Corp.*, 51 Misc. 3d 1209(A), 37 N.Y.S.3d 206 (Table), 2016 WL 1424539 (N.Y. Sup., Erie Cnty. Apr. 7, 2016) (noting that court accepted one 30-page opposition brief submitted by the plaintiff, but directed the plaintiff to reduce a separate 78-page brief to 25 pages in accordance with then-applicable Commercial Division 25-page limit).

76. CPLR 2219(a).

77. *Liang v. Hart*, 132 A.D.3d 765, 765, 17 N.Y.S.3d 771, 772 (2d Dep't 2015). Mandamus petitions under Article 78 are discussed in Chapter 13, § 13-3:1, below.

78. CPLR 2219(a). *See Charalabidis v. Elnagar*, 188 A.D.3d 44, 47, 132 N.Y.S.3d 129, 134 (2d Dep't 2020) (discussing six basic criteria that an order must satisfy).

79. *See Cloke v. Findlan*, 165 A.D.3d 1545, 1546 n.2, 86 N.Y.S.3d 774, 776 n.2 (3d Dep't 2018).

80. *See Charalabidis v. Elnagar*, 188 A.D.3d 44, 47, 132 N.Y.S.3d 129, 134 (2d Dep't 2020).

of an issue made during depositions, trials, or other proceedings, which is not the product of a motion made on notice. Orders are appealable, while decisions and rulings are not; however, rulings that have been objected to and preserved may be reviewed on appeal from a final judgment.

Once the judge issues an order determining the motion, it must be entered and filed in the office of the clerk of the court where the action is pending.[81] The order filed with the clerk of the court constitutes the appealable paper.[82] To ensure that a party against whom relief is granted has notice of such relief,[83] as well as to start that party's 30-day timeframe to file a notice of appeal,[84] the party that obtained the relief sought should serve notice of entry together with a copy of the order, which may be by electronic means.[85]

If an order is made out of court, as may happen with an order to show cause, then—for the losing party to obtain an appealable paper—entry of the order and filing of the papers on which the order was granted may be compelled either by order of the court in which the motion was made or by the court to which an appeal from the order might be taken.[86]

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81. CPLR 2220(a).

82. CPLR 5512(a).

83. *See Wolf Props. Assocs., L.P. v. Castle Restoration, LLC*, 174 A.D.3d 838, 841, 106 N.Y.S.3d 313, 317 (2d Dep't 2019) (holding that discovery order did not become enforceable until the plaintiff served a copy with notice of entry upon the defendant, notwithstanding lack of any such requirement in the order itself).

84. *See* CPLR 5513, discussed in Chapter 10, § 10-2.1, below.

85. *See* Uniform Rule 202.5-b(h)(2).

86. CPLR 5512(b).