PART I
Introduction to Civil Litigation

CHAPTER 1
Litigation and the Paralegal

KEY POINTS

• New York has its own rules of civil procedure, known as the Civil Practice Laws and Rules (CPLR).
• New York also has its own unique court rules, known as the Uniform Rules for the New York State Trial Courts.
• New York also has local court rules, in addition to rules of certain individual judges.
• The summons and complaint must be filed with the County Clerk prior to service.
• New York has its own New York code of administrative regulations: the New York State Codes, Rules and Regulations.

WHAT CIVIL LITIGATION IS

RULES OF CIVIL LITIGATION
New York has its own rules of civil procedure, known as the Civil Practice Laws and Rules, which is commonly referred to as the CPLR. These rules are as in to the Federal Rules of Civil Procedure. However, in New York, when civil litigation is conducted at the state level, the CPLR applies. The CPLR can be found online at assembly.state.ny.us/cgi-bin/claws?law=16

CIVIL LAW VERSUS CRIMINAL LAW

CRIMINAL PROCEDURE LAW. New York has rules governing criminal proceedings, known as the Criminal Procedure Law (CPL.) Where a violation of a right could give rise to both criminal and a civil prosecution, one is not merged into the other. CPLR 106.

CONSTITUTION. Textbook references to the Constitution mean the United States Constitution. Be mindful that New York also has its own constitution, called the Constitution of the State of New York. References in the New York State Supplement refer to the latter. See assembly.state.ny/us/cgi-bin/const

CIVIL RULES. In addition to New York’s rules of civil procedure (CPLR), New York also has court rules known as Uniform Rules for the New York State Trial Courts. Certain jurisdictions have local court rules as well. Likewise, certain judges have their own rules. See www.courts.state.ny.us/ucsrules.html

STANDARDS OF PROOF. The standard of proof for most civil cases in New York is the preponderance of the evidence standard. In civil cases where issues such as fraud or paternity are involved, a higher standard known as clear and convincing proof is used. The standard of evidence used in criminal cases is that of guilt beyond a reasonable doubt.

AN OVERVIEW OF CIVIL LITIGATION
The initial documents used to start litigation are called the Summons and Complaint. Less often, an action is commenced without a complaint by serving a Summons with
Notice. Pursuant to CPLR 305(b), a summons with notice shall contain a notice stating the nature of the action, the relief sought, and the sum for which judgment is demanded (except in medical malpractice actions). See www.nysba.org/public/courts.html#civil

SPECIAL PROCEEDINGS. In New York either a (1) notice of petition and a petition, or (2) an order to show cause is used to commence a special proceeding. See CPLR, Article 4; CPLR 304. This is different than the general litigation process.

DIFFERENT TYPES OF CIVIL LAWSUITS

JURISDICTIONAL LIMITS
A suit for up to $5,000 would be handled in small claims courts. Small claims limits may vary by jurisdiction. A summary of the courts of the New York State court system can be found at www.nysba.org/public/courts.html

ALTERNATIVES AND LIMITATIONS TO LITIGATION

ARBITRATION
Arbitration of certain claims not exceeding $6,000 exclusive of interest is mandatory in certain courts outside the civil court of the city of New York and of certain claims not exceeding $10,000 exclusive of interest in the civil court of the city of New York. See CPLR 3405. In medical, dental, or podiatric malpractice actions, a defendant may demand that the plaintiff elect whether to consent to arbitration of damages upon a concession of liability. See CPLR 3045. Arbitration is governed by Article 75 of the CPLR in great detail. Health care arbitration is addressed by Article 75-A of the CPLR. See www.courts.net/ny/index.html

WORKPLACE INJURY
Generally, employees cannot sue their employers if they are injured on the job. See Worker's Compensation Law. An employee can file a Workers Compensation claim; those matters are adjudicated through an administrative proceeding that is separate from the civil court system.

SOURCES OF THE LAW

PRIMARY SOURCES

SECONDARY SOURCES
FORMS. The New York State Bar Association, Blumberg's, and other legal publishers produce forms for New York practice. Forms can be found online at www.findlaw.com

SKILLS REQUIRED OF THE LITIGATION PARALEGAL

CONTINUING LEGAL EDUCATION
LOCAL LEGAL NEWSPAPERS. The New York State Law Journal is a newspaper that reports New York legal developments, and can be found online at www.law.com

RECENT CPLR DECISIONS. For some of the more recent decisions concerning the CPLR, see www.nysba.org/committees/cplr/recent.html

ADVICE ON NEW YORK PRACTICE. See www.nylj.com/verdicts/nypractice.html

COURT CASES AND STATUTES. See www.findlaw.com/11stategov/ny/laws.html

STATUTES. For New York state statutes, see www.cpr.org

PERIODICALS. The New York State Bar Association publishes New York State Law Digest, a monthly publication of the latest New York legal developments regarding cases and statutes, and a magazine, New York State Bar Journal, which is published eight times each year. See www.nysba.org
CHAPTER 2  The Courts and Jurisdiction

KEY POINTS

• In New York, the Court of Appeals (not the Supreme Court) is the highest state court.
• The defendant appears by serving an Answer or a Notice of Appearance, or by making a motion.
• A defendant may attack personal jurisdiction in his Answer, or file a motion to dismiss for lack of jurisdiction.
• Generally, venue is determined by the county where either party resided when the action was commenced.
• Venue can be changed by motion.

THE COURTS AND LITIGATION

TRIAL COURTS

In New York, the trial court level is called the Supreme Court. This is a court of original and general jurisdiction, both criminal and civil. The Supreme Court is the only court in the state with the jurisdiction to dissolve a marriage.

There are twelve judicial districts in the state. Upstate New York is divided into seven districts, New York County (Manhattan) is the 1st Judicial District; the counties of Kings (Brooklyn) and Richmond (Staten Island) comprise the 2nd Judicial District; the Long Island counties of Nassau and Suffolk are the 10th Judicial District; Queens County is the 11th Judicial District, and Bronx County is the 12th Judicial District. For information about the districts, see http://www.nycourts.gov/courts/index.shtml.
INTERMEDIATE APPELLATE COURT

In New York, matters from the trial court level, or Supreme Court, are appealed to the Appellate Division of the department in which the trial court is located. Up to five justices may sit in any case, with four justices required for a quorum. The Appellate Division hears both civil and criminal appeals.

The state is divided into four Departments, each with its own Appellate Division. In the 1st and 2nd Departments, there is also an appellate term of the Supreme Court, which hears appeals from local and county courts. To see which counties are assigned to which department, see http://www.nycourts.gov/courts/appellatedivisions.shtml.

HIGHEST COURT

In New York, matters from the Appellate Divisions are appealed to the Court of Appeals, which is the highest court in the state. It hears both criminal and civil appeals and is located in the capital of the state in Albany. The Court of Appeals consists of six associate judges and one chief judge; each are appointed to a 14-year term. The Court was established to articulate statewide principles of law in the context of deciding particular lawsuits. The Court thus generally focuses on broad issues of law as distinguished from individual factual disputes. There is no jurisdictional limitation based upon the amount of money at stake in a case or the status or rank of the parties. See http://www.nycourts.gov/ctapps/.

FEDERAL COURT SYSTEM

UNITED STATES DISTRICT COURTS

New York is sectioned by four judicial districts divided geographically into the Northern, Southern, Eastern, and Western districts.

UNITED STATES COURT OF APPEALS

Appeals from the U.S. District Courts in New York are heard by the Second Circuit of the United States Court of Appeals. See http://www.uscourts.gov/links.html.

UNITED STATES SUPREME COURT

References to the Supreme Court at pages 31–32 refer to the United States Supreme Court, not the New York State Supreme Court.

STATE COURT SYSTEMS

District courts (limited to eastern Nassau and Suffolk County), and certain specialized courts: Family Courts, Surrogate Court, and Court of Claims. Neither Family Court nor the Court of Claims has jury trials. New York state is divided into four departments and twelve (12) judicial districts under the New York state court system. For recent court decisions, see www.nycourts.com

NEW YORK STATE COURTS

In New York, courts can hear only certain types of cases. For example, the Surrogate Court deals with the settlement of estates and related probate matters. Other courts may hear cases limited to certain amounts of money damages. An example: County courts cannot hear cases with claims exceeding $25,000, whereas the Supreme Court has unlimited jurisdiction to hear claims with no ceiling as to amount requested in the action. See www.nysba.org/public/courts.html

JURISDICTION

SUBJECT MATTER JURISDICTION

EXCLUSIVE VERSUS CONCURRENT JURISDICTION. See CPLR 325 for grounds for removal to other New York state courts. This is done by parties on motion, or by the court. A notice of removal is not required.

REMOVAL. There is no notice of removal in New York state courts. A motion for removal might be made by the affected party. See CPLR 326 for procedure on removal.
CHAPTER 2  The Courts and Jurisdiction

SUBJECT MATTER JURISDICTION IN THE STATE COURTS

ORIGINAL JURISDICTION. The New York Supreme Court is the trial court with general jurisdiction.

APPELLATE JURISDICTION. In New York, appeals are heard by an intermediate level appellate court, the Appellate Division (the appellate term in the First and Second departments only), and the highest appellate court, the Court of Appeals in Albany.

STATE LONG-ARM STATUTES

See CPLR 302 for grounds for obtaining personal jurisdiction over nonresidents who transact business within the state, or contract to supply goods or services in the state, or commit a tortious act within the state (or even outside the state if acts committed result in New York State consequences), or use or possess real property in the state of New York.

WAIVER BY APPEARANCE

GENERAL APPEARANCE. The defendant appears by serving an Answer, or a Notice of Appearance, or by making a motion. See CPLR 320 regarding distinction between general and limited appearance by defendants.

CHALLENGING PERSONAL JURISDICTION

A defendant in New York may attack personal jurisdiction in his answer. Generally, a motion to dismiss for lack of jurisdiction is brought. See CPLR 3211(a)(8).

MOTION TO QUASH. For New York dismissal motion, see CPLR 3211(a)(8).

STATE LONG-ARM STATUTES

CPLR 302 lists acts by nondomiciliaries subjecting them to in-state suit. Out-of-state residents can be sued in New York state in actions involving demands for alimony. Corporations not authorized under the laws of New York state may also be subject to suit in New York. Also see § 253 of the vehicle and traffic law, for service of summons on non-resident owners and operators of motor vehicles.

INTERNET PRESENCE

“Interactive” Internet presence is sufficient to support a jurisdictional basis for New York long-arm jurisdiction. Citigroup, Inc. v. City Holding Co., 97 F. Supp. 2d 549 (S.D.N.Y. 2000).

QUASI IN REM JURISDICTION

ATTACHMENT. See CPLR 314(3) for levy on property pursuant to an order of attachment.

VENUE

VENUE

In state courts, venue is determined by Article 5 of the CPLR.

Usually, except where otherwise set by law, the place of trial shall be where either party resided when the action was commenced, and if none, in a county selected by the plaintiff. See CPLR 503.

CHANGING VENUE

See CPLR 511(b) for a motion to change the place of trial based on venue. If the county designated is not a proper county, such motion should be served with the answer or before the answer is served. A motion to change the place of trial based on any other ground should be made within reasonable time after the start of the action.
**Exhibit 2-1** Outline of New York State Court System. Courtesy New York State Bar Association, copyright © 2000.

- **Court of Appeals**
- **Appellate Divisions**
  - One in each department (4)
- **Appellate Term**
  - First and Second depts. only
- **Supreme Court**
  - Statewide
- **Court of Claims**
  - Statewide
- **Family Court**
  - One each county, except
    - One for New York City (Five counties in NYC)
- **Surrogate Court**
  - One in each county (62)
- **County Court**
  - One in each county outside of NYC (57)

### New York State Counties by Judicial Department and District

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#### FIRST DEPARTMENT
- **First Judicial District**
  - New York
- **Twelfth Judicial District**
  - Bronx

#### SECOND DEPARTMENT
- **Second Judicial District**
  - Kings
  - Richmond
- **Ninth Judicial District**
  - Dutchess
  - Orange
  - Putnam
  - Rockland
  - Westchester
- **Tenth Judicial District**
  - Nassau
  - Suffolk
- **Eleventh Judicial District**
  - Queens

#### THIRD DEPARTMENT
- **Third Judicial District**
  - Albany
  - Columbia
  - Greene
  - Rensselaer
  - Schoharie
  - Sullivan
  - Ulster
- **Fourth Judicial District**
  - Clinton
  - Essex
  - Franklin
  - Fulton
  - Hamilton
  - Montgomery
  - Saratoga
  - Schenectady
  - St. Lawrence
  - Warren
  - Washington

#### FOURTH DEPARTMENT
- **Fifth Judicial District**
  - Herkimer
  - Jefferson
  - Lewis
  - Oneida
  - Onondaga
  - Oswego
- **Seventh Judicial District**
  - Cayuga
  - Livingston
  - Monroe
  - Ontario
  - Seneca
  - Steuben
  - Wayne
  - Yates
- **Eighth Judicial District**
  - Allegany
  - Cattaraugus
  - Chautauqua
  - Erie
  - Genesee
  - Niagara
  - Orleans
  - Wyoming