

# **New York Practice Sixth Edition January 2025 Supplement Highlights**

## **New features and recent developments addressed in the January 2025 Supplement include:**

- Extensive discussion of the Governor’s executive orders that tolled various time periods in the CPLR and other procedural laws during the COVID-19 Disaster Emergency, including recent caselaw interpreting their effect. *See* §§ 32, 33, 39, 52, 57, 63, 77, 110, 231, 279, 411, 531, 533, 553, 590, 593, 601, 615, and 619
- Adult Survivors Act adds a new CPLR 214-j creating a 1-year window for the revival of otherwise time-barred civil claims arising out of certain sexual offenses (§§ 38, 373)
- Amendment to the BCL permits a corporation to receive process via email and permits service on the secretary of state via email (§ 95)
- The new CPLR 321(d) allows a limited scope appearance by an attorney (§ 115)
- The new CPLR 503(g) requires New York State to commence actions seeking recovery of “[s]tudent debt” in the county where the defendant resides (§ 120)
- Insurance Law amended to require insurer to provide supplemental spousal liability insurance, unless expressly declined (§ 175)
- CPLR 2106 amended to permit any person to submit an affirmation, presenting numerous issues that are already being addressed by courts (§ 205; *see also* §§ 79, 232, 234, 244, 246, 257, 281, 295, 300, 316, 329, 333, 339, 357, 361, 362, 364, 388, 416, 552, 567, 633)
- CPLR 506(b)(5) added to prescribe venue in special proceedings challenging legislative apportionment (§ 549)
- CPLR amended to permit the filing of a lis pendens to combat “deed theft” (§ 334)
- CPLR 7510-a added to require a party seeking to vacate or modify certain arbitration awards to act within 90 days after delivery of the award (§ 601)
- The Housing Stability and Tenant Protection Act amends time periods in summary proceedings (§ 573)
- Court of Appeals addresses whether the participation of a city’s employees in an intentional tort provides a city with

actual knowledge of essential facts constituting the claim (§ 32)

- Court of Appeals rules that defense of interstate sovereign immunity does not deprive the court of subject matter jurisdiction (§ 8)
- Court of Appeals addresses whether the “relation back” doctrine can be invoked to add an otherwise untimely claim (§§ 49, 404)
- Court of Appeals addresses whether an entity that acquires another entity’s assets and liabilities also inherits that entity’s jurisdictional status under CPLR 302 (§§ 85, 92)
- Court of Appeals determines that longarm jurisdiction can be asserted over a nondomiciliary corporation that engaged in purposeful activity within the State (§ 86)
- Court of Appeals reaffirms and applies primary assumption of risk doctrine in two cases (§ 168E)
- Court of Appeals addresses whether a verified pleading has evidentiary value when the verifier does not have personal knowledge of the facts (§§ 205, 232, 246)
- Court of Appeals addresses the procedure under CPLR 4511 for taking judicial notice of a foreign country’s law (§ 216)
- Court of Appeals addresses whether a motion to vacate under CPLR 5015 is the exclusive path for bringing a Judiciary Law Section 487 claim for attorney fraud (§ 429)
- Court of Appeals addresses whether collateral estoppel bars plaintiff’s claims in New York action over which federal court declined to exercise supplemental jurisdiction (§ 469)
- Court of Appeals rules that collective bargaining agreement cannot require arbitration of dispute concerning termination of exempt class employees (§ 587)
- Court of Appeals holds that Major League Baseball’s RSDC should not be disqualified as an arbitral body adjudicating a dispute between teams (§ 596)
- Court of Appeals vacates money judgment entered on arbitral award because arbitral panel was only authorized to determine fair market value of rights (§ 605)
- Appellate Division rules that CPLR 2004 can be invoked to extend 90–day period in RPAPL 1351(1) (§ 6)
- First Department rules that failure to include notice advising the recipient that the action is subject to mandatory e-filing is not fatal (§ 63A)
- Second Department holds that failure to properly serve an order to show cause deprives court of jurisdiction to entertain the motion (§§ 76B, 246, 248)
- Second Department finds Connecticut club, which allegedly failed to supervise its members on field trip to New York, subject to longarm jurisdiction under CPLR 302(a)(2) (§ 87)
- Second Department discusses burdens of proof on a motion to dismiss for lack of personal jurisdiction (§§ 93, 215)

## SUPPLEMENT HIGHLIGHTS

- Failure to correct address on file with secretary of state results in default judgment (§§ 95, 108)
- First and Second Departments address examples of a limited appearance and an informal appearance, and their consequences (§§ 112, 115)
- Second Department rules that defendants can introduce evidence regarding defendants who were granted summary judgment (§ 168D)
- Second Department notes that failure to comply with Uniform Rules pertaining to word count limitations on motion papers should be “overlooked” as a “technical defect” (§§ 201, 246)
- First Department rules that plaintiff is permitted to plead claims based on both negligence and intentional conduct that arise out of the same set of facts (§ 214)
- Second Department rules that RPAPL 1302-a does not apply to a defaulting defendant (§ 223)
- Second Department rules that it cannot review denial of plaintiff’s informal request to amend complaint (§ 237)
- Second Department holds that e-filed deposition transcript cannot be considered part of the record on a motion where its docket number was not provided (§ 246)
- Fourth Department finds “genuine urgency” standard satisfied and concludes that order to show cause seeking dismissal of complaint under CPLR 3211(a)(5) was properly signed (§ 248)
- Appellate Division decisions address defects in cross-motions and late motions (§§ 249, 279)
- Second Department orders hearing under CPLR 2218 to determine if attorney was authorized to represent a co-defendant (§ 251)
- Second Department rules that 2020 amendments to discourage SLAPP suits do not apply to actions commenced prior to effective date of legislation (§ 277)
- Fourth Department reverses order of summary judgment where moving party did not set forth “good cause” for late motion in its original moving papers (§ 279)
- Failure to file complaint voids notice of pendency in federal actions (§§ 335, 640)
- Appellate courts uphold awards of costs and expenses upon cancellation of lis pendens (§ 336)
- Courts address Uniform Rules governing depositions (§ 356)
- Second Department addresses the disclosure of surveillance tapes, cell phones, and potential penalties that can be imposed when the disclosure is not forthcoming (§§ 348, 362, 367)
- First Department rules that plaintiff may seek records directly from municipal defendants instead of under FOIL (§ 348)

- Courts address overly broad and vague discovery notices, and a party's failure to timely respond to disclosure demands (§ 362)
- First Department issues decision discussing scope of procedures permitted during CPLR 3121(a) exam (§ 363)
- Second Department joins First Department in ruling that spoliation sanctions cannot be imposed on plaintiff who elects non-emergency surgery prior to CPLR 3121(a) exam (§§ 363, 367)
- Second Department rules that defendant is not entitled to *Arons* authorization to obtain information regarding cause of plaintiff's fall (§ 363)
- Second Department reverses supreme court and grants cross-motion seeking protective order striking notice to admit that sought admissions going to essence of controversy (§ 364)
- Court rules that attorney's response to notice to admit did not satisfy requirements of CPLR 3123(a), which requires a "sworn statement" of a party (§ 364)
- Several Appellate Division decisions address striking of pleadings based on spoliation of video footage and emails and "willful and contumacious conduct" (§ 367)
- First Department rules that monetary sanctions were properly imposed on defendants who failed to timely produce several "highly relevant" documents (§ 367)
- Third Department rules that supreme court did not abuse its discretion in denying substitute counsel's motion to vacate note of issue more than five years after joinder of issue (§ 370)
- Courts continue to allow affidavits not in compliance with CPLR 2309(c) to be corrected, but the invitation is sometimes declined! (§ 388)
- Fourth Department addresses computation of interest in actions involving automobile accidents, and grants leave to Court of Appeals (§ 411)
- Several decisions impose sanctions on lawyers for citing to nonexistent decisions and erroneous holdings obtained by using artificial intelligence tools, such as ChatGPT (§ 414A)
- Appellate Division decisions rule that jurisdictional objection must be resolved before determining whether it is appropriate to grant a discretionary vacatur of a default judgment (§ 430)
- First Department reviews motion to vacate judgment based on lack of personal jurisdiction under CPLR 302(a)(2) (§ 430)
- Appellate Division decisions address how to obtain review of interlocutory order in an Article 78 proceeding (§§ 526, 570)
- Fourth Department treats defective notice of appeal as valid (§ 534)

#### SUPPLEMENT HIGHLIGHTS

- Court rules that commencement of a special proceeding with an unsigned order to show cause is a nullity (§ 553)
- Second Circuit rules that a judgment in an Article 78 proceeding does not bar a civil rights claim for damages based on the same underlying facts (§ 570)
- Second Circuit affirms dismissal of claims under both Rule 37(e) and court's inherent power (§ 639)
- Much more!

# **New York Practice Sixth Edition July 2024 Supplement Highlights**

## **New features and recent developments addressed in the July 2024 Supplement include:**

- Extensive discussion of the Governor’s executive orders that tolled various time periods in the CPLR and other procedural laws during the COVID-19 Disaster Emergency, including recent caselaw interpreting their effect. *See* §§ 32, 33, 39, 52, 57, 63, 77, 110, 231, 279, 411, 531, 533, 553, 590, 593, 601, 615, and 619
- Adult Survivors Act adds a new CPLR 214-j creating a 1-year window for the revival of otherwise time-barred civil claims arising out of certain sexual offenses (§§ 38, 373)
- Amendment to the BCL permits a corporation to receive process via email and permits service on the secretary of state via email (§ 95)
- The new CPLR 321(d) allows a limited scope appearance by an attorney (§ 115)
- The new CPLR 503(g) requires New York State to commence actions seeking recovery of “[s]tudent debt” in the county where the defendant resides (§ 120)
- Insurance Law amended to require insurer to provide supplemental spousal liability insurance, unless expressly declined (§ 175)
- CPLR 2106 amended to permit any person to submit an affirmation, presenting numerous issues (§ 205; *see also* §§ 79, 232, 234, 244, 246, 257, 281, 295, 300, 316, 329, 333, 339, 357, 361, 362, 364, 388, 416, 552, 567, 633)
- CPLR 506(b)(5) added to prescribe venue in special proceedings challenging legislative apportionment (§ 549)
- Presiding Justices of the Appellate Division adopt revised Standards of Civility (§ 204)
- Court of Appeals rules that defense of interstate sovereign immunity does not deprive the court of subject matter jurisdiction (§ 8)
- Court of Appeals addresses whether the “relation back” can be invoked to add an otherwise untimely claim (§§ 49, 404)
- Court of Appeals determines that longarm jurisdiction can be asserted over a nondomiciliary corporation that engaged in purposeful activity within the State (§ 86)

- Court of Appeals rules that RPTL 1123 tax foreclosure proceeding is based on in rem jurisdiction (§§ 101, 103)
- Court of Appeals reaffirms and applies primary assumption of risk doctrine in two cases (§ 168E)
- Court of Appeals rules that collective bargaining agreement cannot require arbitration of dispute concerning termination of exempt class employees (§ 587)
- Court of Appeals holds that Major League Baseball’s RSDC should not be disqualified as an arbitral body adjudicating a dispute between teams (§ 596)
- Court of Appeals vacates money judgment entered on arbitral award because arbitral panel was only authorized to determine fair market value of rights (§ 605)
- First Department rules that failure to include notice advising the recipient that the action is subject to mandatory e-filing is not fatal (§ 63A)
- Second Department rules “delivery” to defendant’s vacation home proper under CPLR 308(2), but “mailing” there was not to a “last known address” (§ 72)
- Second Department finds Connecticut club, which allegedly failed to supervise its members on field trip to New York, subject to longarm jurisdiction under CPLR 302(a)(2) (§ 87)
- Second Department discusses burdens of proof on a motion to dismiss for lack of personal jurisdiction (§§ 93, 215)
- Failure to correct address on file with secretary of state results in default judgment (§§ 95, 108)
- First and Second Departments address examples of a limited appearance and an informal appearance, and their consequences (§§ 112, 115)
- Second Department rules that defendants can introduce evidence regarding defendants who were granted summary judgment (§ 168D)
- Second Department notes that failure to comply with Uniform Rules pertaining to word count limitations on motion papers should be “overlooked” as a “technical defect” (§§ 201, 246)
- Second Department issues potentially conflicting decisions on whether defendant preserved affirmative defenses (§ 215)
- Fourth Department finds “genuine urgency” standard satisfied and concludes that order to show cause seeking dismissal of complaint under CPLR 3211(a)(5) was properly signed (§ 248)
- Second Department rules that moving party cannot cross-move against its own motion, but mistake can be overlooked (§ 249)
- Second Department affirms order granting motion to renew, noting that its recent decision constituted a “clarification” of the decisional law interpreting the COVID-19 Toll (§ 254)

## SUPPLEMENT HIGHLIGHTS

- Appellate Division decisions agree that a motion for leave to renew based on a change in the law after the action has gone to a final judgment is no longer available (§ 254)
- Second Department rules that 2020 amendments to discourage SLAPP suits do not apply to actions commenced prior to effective date of legislation (§ 277)
- CPLR amended to require additional proof on a default judgment application in most actions arising from a medical debt (§ 295)
- CPLR amended to permit the filing of a lis pendens to combat “deed theft” (§ 334)
- Failure to file complaint voids notice of pendency in federal actions (§§ 335, 640)
- Appellate courts uphold awards of costs and expenses upon cancellation of lis pendens (§ 336)
- Second Department addresses the disclosure of surveillance tapes and potential penalties that can be imposed when the disclosure is not forthcoming (§§ 348, 362, 367)
- First Department rules that plaintiff may seek records directly from municipal defendants instead of under FOIL (§ 348)
- Courts address overly broad and vague discovery notices, and a party’s failure to timely respond to disclosure demands (§ 362)
- First Department issues decision discussing scope of procedures permitted during CPLR 3121(a) exam (§ 363)
- Second Department joins First Department in ruling that spoliation sanctions cannot be imposed on plaintiff who elects non-emergency surgery prior to CPLR 3121(a) exam (§§ 363, 367)
- Second Department rules that defendant is not entitled to *Arons* authorization to obtain information regarding cause of plaintiff’s fall (§ 363)
- Several decisions impose sanctions on lawyers for citing to nonexistent decisions and erroneous holdings obtained by using artificial intelligence tools, such as ChatGPT (§ 414A)
- Appellate Division decisions rule that jurisdictional objection must be resolved before determining whether it is appropriate to grant a discretionary vacatur of a default judgment (§ 430)
- First Department reviews motion to vacate judgment based on lack of personal jurisdiction under CPLR 302(a)(2) (§ 430)
- Appellate Division decisions address how to obtain review of interlocutory order in an Article 78 proceeding (§§ 526, 570)
- Fourth Department treats defective notice of appeal as valid (§ 534)

- Third and Fourth Departments agree that commencing a special proceeding with a notice of petition that omits a return date can be cured (§ 553)
- Court rules that commencement of a special proceeding with an unsigned order to show cause is a nullity (§ 553)
- Second Circuit rules that a judgment in an Article 78 proceeding does not bar a civil rights claim for damages based on the same underlying facts (§ 570)
- CPLR 7510-a added to require a party seeking to vacate or modify certain arbitration awards to act within 90 days after delivery of the award (§ 601)
- Much more!

# **New York Practice Sixth Edition July 2023 Supplement Highlights**

## **New features and recent developments addressed in the July 2023 Supplement include:**

- Extensive discussion of the Governor’s executive orders that tolled various time periods in the CPLR and other procedural laws during the COVID-19 Disaster Emergency, including recent caselaw interpreting their effect. *See* §§ 32, 33, 39, 52, 57, 63, 77, 110, 231, 279, 411, 531, 533, 553, 590, 593, 601, 615, and 619
- The expansion of e-filing through an administrative order effective December 22, 2021, the promulgation of new forms to assist parties in commencing actions via e-filing and converting paper actions to electronic form, and the newly implemented Electronic Document Delivery System (“EDDS”). *See* §§ 17, 19, 33, 63A, 77, 202
- The 2021 & 2022 revisions to the Uniform Rules for The Supreme Court & The County Court, which incorporated 29 new provisions similar to those in the Rules of Practice for the Commercial Division, and caselaw interpreting the revised rules. *See* §§ 3, 12, 27, 77D, 201, 246, 247, 248, 249, 277, 281, 330, 345, 353, 354, 356, 361, 362, 366, 367, 374, 414A, 552, 638
- Foreclosure Abuse Prevention Act of 2022 attempts to overrule recent Court of Appeals precedent by amending and adding several provisions to the CPLR (§§ 35, 40, 52, 223, 263, and 297)
- Adult Survivors Act adds a new CPLR 214-j creating a 1-year window for the revival of otherwise time-barred civil claims arising out of certain sexual offenses (§ 38)
- Amendment to the BCL permits a corporation to receive process via email and permits service on the secretary of state via email (§ 95)
- The new CPLR 321(d) allows a limited scope appearance by an attorney (§ 115)
- Consumer Credit Fairness Act adds and amends several provisions in the CPLR (§§ 35, 45, 60, 63, 111, 117, 216, 247, 266, 269, 274, 278, 291, 295, 296, 601)
- CPLR 3101(f) amended to require production of existence and contents of insurance policy (§ 344)

- CPLR 5004 amended to change the “annual rate of interest to be paid in an action arising out of a consumer debt where a natural person is a defendant” (§ 412)
- Amendments to CPLR Article 53 that essentially adopt the Uniform Law Commission’s 2005 Foreign Country Money Judgments Recognition Act (§ 472)
- The addition of CPLR 5205(p) to exempt COVID-19 Stimulus Relief payments for individuals and families with children from application to money judgments (§ 490)
- CPLR 5201(b) amended to prohibit property lien from being entered or enforced on a debtor’s primary residence in action based on medical debt (§ 490)
- CPLR 5231(b) amended to prohibit withholding of money due to judgment debtor for payment of judgment arising from medical debt (§ 503)
- The federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act renders the FAA consistent with CPLR 7515, at least in some respects (§ 587)
- United States Supreme Court rules that “look-through” approach to ascertain subject matter jurisdiction does not apply to proceedings under sections 9 & 10 of the FAA (§ 607)
- Court of Appeals addresses whether the “relation back” doctrine under CPLR 203(f) can be invoked to add an otherwise untimely claim (§ 49)
- Court of Appeals determines whether the CPLR’s “relation back” statute can be invoked to excuse plaintiff’s failure to comply with a contractual prerequisite to suit (§ 49)
- Court of Appeals addresses whether CPLR 205 can be invoked by a party seeking to vindicate the rights of a different plaintiff in prior action (§ 52)
- Court of Appeals determines whether longarm jurisdiction can be asserted over a nondomiciliary corporation that engaged in purposeful activity within the State (§ 86)
- Court of Appeals rules that venue in the Bronx is improper where “individually-owned business” did not have its “principal office” in that county (§ 119)
- Court of Appeals affirms order dismissing appeal from family court for lack of aggrievement based on father’s failure to appear at dispositional hearing (§ 525)
- Court of Appeals holds that nonfinal order did not necessarily affect final judgment and could not be reviewed (§ 530)
- Second Department holds that failure to sign summons does not require dismissal of action (§ 60)
- Second Department addresses the consequences of a limited appearance (§ 115)
- Second Department rules that motion to change venue based on contractual provision must be made in county where action is pending when defendant does not invoke demand procedure (§ 117)

## SUPPLEMENT HIGHLIGHTS

- Appellate Division decisions agree that a motion for leave to renew based on a change in the law after the action has gone to a final judgment is no longer available (§ 254)
- First Department rules that parties' settlement agreement qualifies as an "instrument for the payment of money only" (§ 289)
- Second Department addresses timeliness of voluntary discontinuance in multi-party action (§ 297)
- Second Department orders disclosure of plaintiff's social media activity (§ 344)
- First Department holds that defendants are entitled to authorizations from plaintiff to prepare for collateral source hearing (§ 348) and that disclosure demand for hospital authorizations is authorized by CPLR 3121 (§ 363)
- Court denies plaintiff's application for a remote deposition, but requires adherence to several safety procedures (§ 356)
- Fourth Department orders production of plaintiff's cell phone (§ 362)
- Courts address overly broad and vague discovery notices, and a party's failure to timely respond to disclosure demands (§ 362)
- Second Department affirms order striking plaintiff's complaint after repeated failures to comply with demands for a bill of particulars, discovery requests, and court orders (§ 367)
- First Department rules that failure to comply with self-executing preclusion order requires dismissal of complaint (§ 367)
- Second Department finds dismissal orders under CPLR 3216 improper on several grounds (§ 375)
- Third Department affirms order granting petitioner counsel fees under CPLR 8601 (§ 414)
- Much more!