

SELF-HELP CENTERS

NOTE: PERSONS WITHOUT COUNSEL ARE ADVISED TO CONSULT AN ATTORNEY. **COURT STAFF MAY NOT GIVE LEGAL ADVICE, PREPARE YOUR PAPERS OR ACT AS YOUR ATTORNEY.**

COURT "ORDERS" "JUDGMENTS"

SUBMIT, SETTLE, ENTRY AN OVERVIEW

A Court **ORDER** may be generally defined as a determination of a court (usually in writing although occasionally orders are delivered orally (right from on the bench) that resolves a request (motion) by a party to a lawsuit for some specific relief.

(Remember, a motion is defined as a specific request (or prayer) for specific relief from a court in the form of an order.) A judgment is, generally speaking, a determination by a court (either by a judge or justice acting alone or together with a jury) that sets forth the final results of an entire case or of a discrete claim for relief in a case. For example, a judgment may award plaintiff a specific sum of money based upon the court's finding that the defendant negligently injured the plaintiff causing injury.

Orders are always signed by a judge or justice. (Remember, in Supreme Court the judge's proper title is justice.) Judgments maybe signed by a justice or by the County Clerk in accordance with a written directive (or decision) issued by a justice. Obviously, before a justice signs an order, the order must be drafted (written) (the correct legal term is drawn) either by one of the parties or by the justice.

For most orders, the justice will direct that the prevailing (winning) party on a motion draw (prepare) a long form order for the justice's signature and either "submit" or "settle" the order.

However, occasionally, the justice himself or herself will prepare a short form order. (See, Appendix 1.)

In the case of Funk v B, 89 NY2d 364 (that is, Volume 89 of the casebooks called New York Second, page 364), the New York Court of Appeals (New York's highest court) explained:

"When a decision ends with the directive to 'submit order' the court is generally directing the prevailing party to draw up the order and present it to the judge ... who looks it over to make sure it reflects the decision properly, and then signs or initials it' (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 70, CPLR C2220:4, at 170). This procedure calls for no notice to the opponent (Ld.).

A directive to 'settle' by contrast' is reserved for more complicated dispositions, such as orders involving restraints or contemplating a set of follow-up procedures' (id.). Because the decision ordinarily entails more complicated relief, the instruction contemplates notice to the opponent so that both parties may either agree on a draft or prepare counter-proposals to be settled before the court The common element in both directives is that further drafting and judicial approval of the judgment or order is contemplated." (Funk v Barry, 89 NY2d 364, at 367.)

Accordingly, should a party make or oppose a motion and then receive a favorable decision, which directs that an order be "submitted or settled," that party must properly draw (prepare) the proposed order and then take the proper procedural steps to arrange for it to be put before the court for the justice's signature. Also, in deciding motions, the justices often do Decisions and Orders for which no further order is required or expected.

The basic rules covering these procedures are found in the Civil Practice Law and Rules (the "CPLR" for short), Sections 2219 and 2220 and in Volume 22 of the New York Code Rules and Regulations ("22 NYCRR" for short), Rule 202AP (Lee, Appendix 2 and 3). In drawing a proposed order, it is especially important to follow CPLR 2219 requirement that the proposed order "state the court ... the place and date of the signature, recite the papers used on the motion and give the

determination or directive in such detail as the judge deems proper. (A sample long form order is attached as Appendix 4.)

If the judge's decision merely directed "submit order" once the order is drawn, the prevailing party just submits it to the Court BUT this should (must) be done within sixty (60) days of the justice's decision.

If the justice's decision says settle order or submit order on notice, unless otherwise specifically directed by the court, the prevailing party must draw the order, attach the order to a notice of settlement (this is usually done by completing the notice of settlement box in the lower left hand corner of a blue back see, Appendix 5) and serving on the other parties to the lawsuit at least five (5) days before its settlement date (ten (10) days if the order is served by mail). The order together with the notice of settlement must be served and presented to the court within sixty (60) days of the justice's decision. The party settling the order must also submit an original affidavit of service showing the proposed order and notice of settlement was served on all other parties to the case. A form is available from the Public Legal Resource Center for this purpose.

Proposed counter orders must be made returnable on the same day and place as the original order and served at least two (2) days before the return day (seven (7) days if served by mail).

Once the prevailing party has served and settled the order, it may or may not be amended by the justice before he/she signs it.

Once the order (or judgment) is signed, the prevailing party needs to insure that it is **entered** by the County Clerk and that a copy of the signed order with notice of entry is served on the other parties to the lawsuit. It is this service which commences the losing party a thirty (30) daytime limit in which to appeal.

Entry in this context is defined as the formal filing in the County Clerk's Office and recording in the County Clerk's records (called minutes) of an order or judgment after it is signed by the County Clerk. The "entry" date is the actual date stamped by the County Clerk on the original Order or Judgment.

Generally speaking, after a justice or judge signs an order, the court's own clerks arrange to have the order sent to the County Clerk who then "enters" it.

Therefore, in order to have an "entered" order to serve on his/her adversaries, the prevailing party must obtain a copy of the signed (by the judge or justice or County Clerk) entered (stamped with the entry [filed] date by the County Clerk) from the County Clerk. Once this is done, the prevailing party should serve a copy of the signed entered order with notice of entry on all the other parties to the case.

The notice of entry is usually prepared by using the notice of entry box found on the upper left hand part of the blue back (see, Appendix 5).

After the service is complete, the prevailing party should file with the County Clerk an original affidavit of service showing that a copy of the signed entered order with notice of entry was actually served on all the other parties to the case. A form affidavit of service is available from the Public Legal Resource Center.

However, for judgments, the prevailing party must appear before the Office of the County Clerk and request entry of judgment.

It is the prevailing party's responsibility to prepare the proper papers for this. These papers are called the judgment-roll and are set forth in CPLR 5017 (Lee, Appendix 6).

Once the papers are in proper form, the County Clerk will sign and enter the judgment (CPLR 5016) (see, Appendix 6). Once this is done, the prevailing party should serve a copy of the signed judgment with notice of entry on all other parties using the same procedures as for an order previously explained herein.

It is this final service which starts the clock on the losing party's time to appeal. (Remember, after this service is complete, an original affidavit of service stating this was done should be filed with the Office of the County Clerk.