

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVES AND PROCEDURES

Subject: Extension of Time to Serve
Summons and Complaint

Class: DRP-184
Category: GP-10
Eff. Date: May 28, 2009

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BACKGROUND

The Civil Court Act Section 411 requires that service be made within one hundred twenty days after filing of the summons and complaint, third party summons and complaint, petition with a notice of petition or order to show cause and petition. There has been some confusion on how to proceed when service is not made within the time provided. To extend the time to serve some clerks are requiring motions on notice to be filed and not accepting ex parte motions. CPLR Section 306-b provides that, if service is not made upon a defendant within the time provided, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time to answer. There is no requirement in section 306-b for the motion to extend to be on notice. To unify practices citywide we are instituting the following directive.

DIRECTIVE

A litigant may apply to the court to extend the time to serve a summons and complaint, third-party summons and complaint, petition and a notice of petition or order to show cause and petition by filing a motion. The motion to extend the time to serve may be made ex-parte or on notice.

Attached please find the newly created Ex-parte Application/Order to Extend the Time to Serve form CIV-GP-116. This form is to be used to assist the unrepresented users who request an extension of the time to serve a summons and complaint, third-party summons and complaint, petition and notice of petition or order to show cause and petition.

Date 5/29/09

/s/
Fern A. Fisher
Administrative Judge

/s/
Jack Baer
Chief Clerk