

AN OVERVIEW ON HOW TO SUBMIT/SETTLE AND ENTER COURT ORDERS OR JUDGMENTS

[NOTE: Persons without counsel are advised to consult with an attorney. Court staff MAY NOT give legal advice, prepare your papers or act as your attorney.]

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

A Judgment is a determination by the 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 the plaintiff a specific sum of money based upon the court's finding that the defendant negligently injured the plaintiff.

Orders are always signed by a judge or justice. Judgments may be signed by a justice or by the County Clerk in accordance with a written directive (decision) issued by a justice. Obviously, before a justice signs an order, the order must be drafted (written) by one of the parties or by the justice.

For most orders, the justice will direct that the winning party on a motion prepare the order for the justice's signature and either "submit" or "settle" the order. Occasionally, however, the justice himself/herself will prepare the order.

In the case of *Funk v. Barry* (89 NY2d 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[] 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 7B, CPLR C2220:4, at 170). This procedure typically calls for no notice to the opponent (*id.*).

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 receives a favorable decision, which directs that an order be "submitted or settled," that party must prepare the proposed order and then

take the proper steps to put it before the court for the justice's signature. Also, in deciding motions, justices often do written Decisions and Orders for which no further order is required or expected. However, you should check the Decision and Order to make sure nothing further is required of you.

The basic rules covering these procedures are found in the Civil Practice Law and Rules (CPLR for short), Sections 2219 and 2220, and in Volume 22 of the New York Code Rules and Regulations (22 NYCRR for short), Rule 202.4P. In drawing a proposed order, it is especially important to follow CPLR§2219 requirements 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.”

If the justice's decision merely directed “submits order”, once the order is prepared, the winning party just submits it to the court but this 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 winning party must prepare the order, attach the order to a notice of settlement and serve it 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 were served on all other parties to the case.

An opposing party may submit a proposed counter order, but such an order 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 winning party has served and settled the order, it may or may not be amended by the justice before he/she signs it. When the order is signed, the winning party needs to make sure 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 that starts the clock running on the thirty (30) days in which the losing party can 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 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. After a justice or judge signs an order, the court clerks usually arrange to have the order sent to the County Clerk who then “enters” it.

In order to have an “entered” order to serve on his/her adversaries, the winning party must get from the County Clerk a copy of the order that’s been signed by the judge/justice/County Clerk with the entry (filed) date stamped on it. Once this is done, the winning party should serve a copy of the signed entered order with notice of entry on all the other parties to the case. After the service is complete, the winning 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.

However, for judgments, the winning party must appear before the Office of the County Clerk and request entry of judgment. It is the winning party's responsibility to prepare the proper papers for this. These papers are called the judgment-roll and are set forth in CPLR §5017. Once the papers are in proper form, the County Clerk will sign and enter the judgment (CPLR §5016). After this is done, the winning 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 explained above.

It is this final service of an order or judgment with notice of entry that starts the clock running 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 County Clerk.