

## The Survey of New York Practice Table of Contents

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# THE SURVEY OF NEW YORK PRACTICE

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## INTRODUCTION\*

In this first issue of Volume 58, the *Survey* discusses a variety of recent developments in New York Law. Among the Court of Appeals decisions examined is *Shields v. Gross*, which addresses the scope of a minor's rights under New York's right of privacy law. The *Shields* Court interpreted section 50 of the New York Civil Rights Law as abrogating a minor's common-law right to disaffirm a contract where consent was procured through the minor's parent or guardian. Since the statute unequivocally gives legal significance to the guardian's authorization, the Court reasoned, the legislature must have intended that consent to be binding. The issue of a mu-

\* The following abbreviations will be used uniformly throughout *The Survey*:

New York Civil Practice Law and Rules (McKinney) .....	CPLR
New York Civil Practice Act .....	CPA
New York Criminal Procedure Law (McKinney) .....	CPL
New York Code of Criminal Procedure .....	CCP
Real Property Actions and Proceedings Law (McKinney) .....	RPAPL
Domestic Relations Law (McKinney) .....	DRL
Estates, Powers and Trusts Law (McKinney) .....	EPTL
General Municipal Law (McKinney) .....	GML
General Obligations Law (McKinney) .....	GOL
D. Siegel, <i>New York Practice</i> (1978) .....	SIEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1982) .....	WK&M
<i>The Biannual Survey of New York Practice</i> .....	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i> .....	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i> .....	<i>The Survey</i>

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. Leg. Doc. No. 6(b) .....	FIRST REP.
1958 N.Y. Leg. Doc. No. 13 .....	SECOND REP.
1959 N.Y. Leg. Doc. No. 17 .....	THIRD REP.
1960 N.Y. Leg. Doc. No. 120 .....	FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure .....	FINAL REP.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committee:

1961 N.Y. Leg. Doc. No. 15 .....	FIFTH REP.
1962 N.Y. Leg. Doc. No. 8 .....	SIXTH REP.

nicipality's tort liability was addressed in *O'Connor v. City of New York*. In refusing to hold the City liable for the negligent inspection of a building, the *O'Connor* Court adhered to the well-established New York rule that absent a special relationship creating a duty owed to the plaintiff, the City remains immune from liability. In *Goncalves v. Regent International Hotels, Ltd.*, the Court analyzed section 200 of the General Business Law, and concluded that the determination of whether a hotel's security system satisfies the statutory criteria is a question of fact.

In *Fiedelman v. New York State Department of Health*, the Court of Appeals held that CPLR 2103, which extends the time of service when made by mail, does not apply to administrative proceedings, since such proceedings are not considered pending actions within the purview of the statute. Also discussed in the *Survey* is the Court's decision in *In re Estate of Riefberg*, in which a stock buy-sell agreement was held to fall within the statutory definition of a testamentary substitute under section 5-1.1(b) of the EPTL.

Finally, in *People v. McCray*, the Court upheld the constitutionality of the unrestricted use of peremptory challenges, finding that the sixth amendment is satisfied when the venire itself consists of a representative cross section of jurors in a jurisdiction.

It is hoped that the cases presented in *The Survey* will contribute to our readers' understanding of these developments.

## CIVIL PRACTICE LAW AND RULES

### Article 21—Papers

#### *CPLR 2103(b): Extension of time for service by mail does not apply to administrative proceedings*

Section 2103 of the CPLR permits the period during which legal papers must be served to be extended by 5 days if such service is accomplished by mail.<sup>1</sup> Prior to the enactment of the CPLR,

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<sup>1</sup> CPLR 2103(b)(2) (1976 & Supp. 1982-1983). Section 2103(b)(2) provides that papers shall be served upon a party's attorney when an "action" is "pending." *Id.*; see *infra* note 3. Service may be accomplished (1) by personal delivery; (2) by mail to a designated address or to a last known address; (3) by service at the attorney's office; or (4) where service at an office is impossible, at the attorney's residence. CPLR 2103(b) (1976 & Supp. 1982-1983). Any of these methods, except service at an office, may be used instead to serve papers upon the party himself if the party "has not appeared by an attorney or his attorney cannot be served." CPLR 2103(c) (1976). These provisions should be distinguished from those con-