Long Beach
Oceanside
Island Park
Independent Voice
Since 1932
SERVING LONG BEACH, OCEANSIDE, ISLAND PARK, LIDO BEACH, ATLANTIC BEACH AND PT. LOOKOUT
VOLUME 65, NO. 16 | THURSDAY, APRIL 18, 1996 | NEWSSTAND PRICE 35¢

In the Line of Fire

Councilmember Singled Out by Disgruntled Tenants on Rent Control

by Michelle Gotthelf

Tenants in the fray against the Long Beach City Council proposal to abolish rent control regulations have pointed fingers at Councilman Michael Zapson, accusing him of promoting his own agenda while backing the council's proposal.

The accusations have been called "unfounded" by Zapson, a corporation shareholder, part owner of the Monroe Beach, Inc. apartments at 270 Shore Road, formerly the San Remo complex. He said he believes insinuations have been circulating as part of "premature" campaign to gain his council seat by one member opposing the rent destabilization proposal.

Zapson said rent control regulations were lifted in 1992 by New York State on his complex, and since, all except 10 of the 62 apartments have been leased for market value. "When I said I would be unaffected regardless of the decision, I meant it," Zapson said.

At press time, he said he was mulling over whether to recuse himself on the issue.

But John Kulik, a representative of the Association of San Remo Tenants (ASRT) and a renter of a Monroe Beach apartment, contends Zapson used his affiliations to sway support on the proposal. Calling Zapson's involvement "a conflict of interest" Kulik cited that the Nassau County General Municipal Law, written in reference to certain interests prohibited, states, "No member of the governing board, of a municipality shall have any interest in the development or operation of any real property located within Nassau County."

"We want to get the word out," Kulik said. "We believe Zapson has no interest in protecting residents, but wants to give landlords a way to produce larger profits when they sell their buildings...Buildings will sell for higher amounts once they are no longer regulated."

Kulik said he feels once the Emergency Tenants Protection Act (EPTA) is removed, the landlords will begin to harass tenants whose

Continued on Page 3

WHAT AN EGG-CITING DAY: It was a beautiful for egg hunting and more than 1,000 participants entered the Recreation Department's Annual Easter Egg Hunt. Pictured here are winners in the four-year-old race, left to right are, Dayvon Merchant, Christian Marquez, and Kara Munstetter. Also pictured are, the Easter Bunny, School Board member Norman Alpren, City Councilman Michael Zapson, Dottie Baraiscale and Randy Dodd, assistant superintendent of recreation.

Art Show Plans in the Works

City of Long Beach Begins Preparation for Annual Event

Attention local artists! The City of Long Beach is once again holding its Annual Fine Arts Show in Kennedy Plaza. This year's show will be held on June 15 and 16, and is being co-sponsored by the Long Beach Public Library.

City Councilman and high school art teacher Joel Crystal, joins a show committee comprised of Eric and Heady Page of Follow Your Art Gallery, and Bob Krauss, a local artist, who are all working to make this event more successful than the previous year.

The committee invites artists to present and sell their creative works, including oil paintings, acrylics, watercolors, pastels, mixed media, drawings, prints, sculpture, and photography, to an audience of thousands who are expected to attend the two-day show.

First Place and Honorable Mention awards will be given in different mediums. In addition, several organizations have contributed $2,000 in Purchase Awards. A 15 foot space in the show costs $50 and applications are available by contacting Eric or Heady Page at 431-6262, between 9 a.m. and 5 p.m. Artists are required to send in slides of their work or make an appointment for the committee to view individual works of art.

All proceeds collected cover the show advertising and awards.

Agreement on New LB Building

by Michelle Gotthelf

The Long Beach City Council has agreed to pay $200,000 to acquire the South Shore Foods, Inc. building on West Pine Street to serve as a city warehouse and to centralize departments outside City Hall.

An agreement by building owner and Long Beach resident Helen Rotkowitz to sell for a price City Manager Edwin Eaton called "a steal," coupled with the location of the property, 100 West Pine St. and National Boulevard, led the council to decide to purchase without reservation, Eaton said. He added that because the commercial building stands next to another city-owned building, when the facility begins to house outside departments, such as acting as a home-base for Long Beach lifeguards, the location will be convenient for city workers who must travel from building to building.

Eaton said it was imperative the city find a home to warehouse its lifeguard equipment. With the beach and boating season just around the corner, the building's acquisition comes in the nick of time, months after the city sold its former storage facility at Lafayette Boulevard and the boardwalk.

The $200,000 cost for the commercial building includes property and furnishings, but not the cost of title charges and closing adjustments. The city will not have to renovate or refurbish the building, Eaton said, because its condition will suit the city's needs, allowing for space to house its traffic division sign shop.

Put on a Happy Face for "Bye Bye Birdie"

The Theatre Guild of Oceanside presents "Bye Bye Birdie," in the Merle Avenue School auditorium, April 19, and 20, at 8 p.m. and April 21, at 2 p.m.

Ticket prices are $12.50 for general admission, with a $2.50 discount for seniors and students (Fri., and Sun., performances only) Group sales are available.

For further information call 867-7011 or 594-2336.

Zapson Singled Out by Disgruntled Tenants

Continued from Page 1

rents are protected by the city's enactment of a Rent Decontrol ordinance, which will be put in place to protect only residents already residing in the apartments.

Zapson said this argument is valid, but maintains the policy has been rewritten to include stricter penalties for landlords who are charged with harassment.

6/17/96 Long Beach
Joel Asarch - Corp. Counsel

Shirley Weber	Shirley
Anne Kayman	David Soven
Michael Roseingrave	MM

JA: CCs did not ask for declaratory judgment - believes they don't think they have a 5% vacancy rate -

not sure what law is on warehousing - would hv to include non-RS bldgs in survey - would have to include senior bldgs - Sr Citizen bldgs (not nursing homes) - wld hv to include all bldgs >60 units -

would be beneficial if TA intervened -

25 West Broadway - venting? C of O?

if court orders a survey - 3 options:
Jan 96
April 96
or Now =

JA: submitting answer this Thursday -

SW: are you hiring outside counsel?
JA: yes but someone outside Nassau County - fears taint -

JA: not outside counsel but a consulting attorney - don't want to bankrupt a city but want somebody to make sure I'm on the right track - attach importance to my name -

2 more lawsuits since 1st 2 - not moving to dismiss at this time -

will depose Walton & Paulsen back to 1990 - filing answers to all 4 lawsuits Thursday -

JA: 1st defense - laches (time bar - 17 years)

2nd defense - res judicata etc. Used annual ETPA fees w/o protest until this year -

3rd defense - laches

4th defense - waiver

5th defense - simultaneous federal lawsuit

6th defense - ETPA resolutions have been upheld by courts - damages premature - would have to overturn RS before asking dama

JA: will file motions to depose Walton & Paulsen -

will seek decision from court setting terms of survey - discovery first -

may move to dismiss later -

if at later point results of survey show we might lose, I might recommend VD to protect 70 & 80 year Ts on fixed incomes -

→ names of attorneys -
hourly rate $140/$150 -

Comfortable w/ attys in this office -
needs to control costs -

→ Info on warehousing -
esp. people who tried to rent c. Jan 96 -

JA: Herzfeld & Rubin taking lead on case - not Shlutman -

CPLR

§ 1014. Proposed intervention pleading.

A motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.

SYNOPSIS

Former counterpart:

CPLR 1014 is the same as subdivision 3 of section 193–b of the Civil Practice Act, with omissions and minor language changes that do not change the meaning.

References:

1962 Sen. Fin. Comm. Rep. 164; 1961 Sen. Fin. Comm. Rep. 319–20; 5 N.Y. Adv. Comm. Rep. A–342 (Advance Draft 1961); 12 N.Y. Jud. Council Rep. 227–28 (1946).

3B MOORE'S FEDERAL PRACTICE ¶¶ 24.12, 24.14, 24.16, 24.17 (2d ed.).

Key Nos.: Parties 43–46, 48.

Forms:

See BENDER'S FORMS FOR THE CIVIL PRACTICE—CPLR, Form No. 1014:1 *et seq.*

¶ 1014.01. Procedure in general.

A person may intervene in a pending suit, whether as of right or by permission, only on a timely motion made to the court. The motion must be made in accordance with CPLR

2214, and the motion papers must be served on all parties.[1] CPLR 1014 provides that the motion papers "shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought." Nearly all courts view this clause as mandatory and deny the motion where no proposed pleading is served.[2] The proposed pleading assists

[1] *See* CPLR 2103(e), which provides in pertinent part that "[e]ach paper served on any party shall be served on every other party who has appeared, except as otherwise may be provided by court order." *See also, e.g.,* Rozewicz v. Ciminelli, 116 A.D.2d 990, 990, 498 N.Y.S.2d 613, 614 (4th Dept. 1986) ("In the absence of a timely motion made in accordance with CPLR 2214 and accompanied by a proposed pleading . . ., it was error for Special Term even to entertain the request . . . to intervene.").

[2] *See, e.g.,* Rozewicz v. Ciminelli, *supra,* n.1; Matter of Brooklyn Union Gas Co. v. State Bd. of Equalization and Assessment, 101 A.D.2d 909, 910, 475 N.Y.S.2d 608, 609–10 (3d Dept. 1984) (motion to intervene as of right denied, unless movant served proposed pleading on all parties within twenty days); Matter of Colonial Sand & Stone Co. v. Flacke, 75 A.D.2d 894, 428 N.Y.S.2d 55 (2d Dept. 1980) (Special Term "had no power" to grant motion to intervene, because proposed intervenor did not serve proposed pleading); Mohawk Maintenance Co. v. Drake, 29 A.D.2d 689, 689, 287 N.Y.S.2d 124, 125 (2d Dept. 1968) (court was "without the power" to grant motion to intervene, because movant failed to serve proposed pleading; movant was granted leave to renew motion on proper papers); Matter of Carriage Hill, Inc. v. Lane, 20 A.D.2d 914, 249 N.Y.S.2d 455 (2d Dept. 1964) ("court has no power to grant leave to intervene where . . . the prospective intervenors did not include in their motion papers a proposed pleading"); Matter of Roxanne F., 104 Misc. 2d 680, 682, 428 N.Y.S.2d 853, 855 (Fam. Ct. N.Y. Co.), *rev'd,* on other grounds, 79 A.D.2d 505, 433 N.Y.S.2d 762 (1st Dept. 1980) (granting motion for permissive intervention, after having denied without prejudice earlier permissive-intervention motion for failure to serve proposed pleading); 176 E. 123d St. Corp. v. Frangen, 67 Misc. 2d 281, 283, 323 N.Y.S.2d 737, 739 (N.Y.C. Civ. Ct. 1971) (failure to serve proposed pleading "in itself requires denial of the motion" to intervene); Moore v. Town of Oyster Bay, 29 Misc. 2d 169, 171, 211 N.Y.S.2d 858, 860 (Sup. Ct. Nassau Co. 1961); Matter of Virgo v. Zoning Bd. of Appeals, 28 Misc. 2d 886, 887, 212 N.Y.S.2d 586, 587 (Sup. Ct. Monroe Co. 1961); Forker v. Royal Dev. Co., 189 Misc. 798, 801, 72 N.Y.S.2d 59, 61 (Sup. Ct. Monroe Co. 1947). *But see* Ryder v. Travelers Ins. Co., 37 A.D.2d 797, 797, 324 N.Y.S.2d 804, 806 (4th Dept. 1971) (movants sought intervention without serving proposed pleading, but supporting affidavit "made very clear the proposed defense and appellant was not prejudiced by absence of the pleading," which movant later served on it; held that Special Term, in the interest of justice, properly exercised discretion in authorizing intervention); Matter of Estate of Rubin, 19 Misc. 2d 631, 632, 190 N.Y.S.2d 469, 470 (Surr. Ct. Nassau Co.

the court in
the standard
may be.[3] Th
with the usu
ings alone.[4]
dure for CP
served first
ence seems t

1959) (propose
"might waive t
claim or defens
nent part that
intervene upon
for and shall be
fense for which
Practice ¶¶ 24.
Procedure § 19

[3] *See, e.g.,* St
Corp., 86 A.D.2
ing motion for
implicitly, that
reason for the [
motion for inter
Misc. 2d 886, 8
("without the p
can determine w
new matters to
N.Y. Jud. Cou
pleading is to er
right to interve
granted").

[4] *See, e.g.,* R
N.Y.S.2d 314, 3
dismissed on a p
benefit of every
the discussion u
10 A.D.2d 920,
about whether
would survive li
tervene); Gross
192 N.Y.S.2d 40
to intervene was
his claim).

the court in determining whether intervention would satisfy the standards established by CPLR 1012 or 1013, as the case may be.[3] The proposed intervention pleading is construed with the usual reluctance to dispose of cases on the pleadings alone.[4] Intervention procedure thus differs from procedure for CPLR 1007 impleader, under which the pleading is served first and a court order is not required. This difference seems to reflect a reluctance to authorize a stranger to

---

1959) (proposed intervenor did not serve a proposed pleading, but court "might waive the technical defect" if motion papers disclosed movant's claim or defense). *See also* Fed. R. Civ. P. 24(c), which provides in pertinent part that "[a] person desiring to intervene shall serve a motion to intervene upon the parties . . .. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." *See generally* 3B Moore's Federal Practice ¶¶ 24.12, 24.14; 7C Wright, Miller & Kane, Federal Practice & Procedure § 1914 (1986 and Supp. 1988).

[3] *See, e.g.,* Sterling Nat'l Bank & Trust Co. v. Ambassador Factors Corp., 86 A.D.2d 547, 548, 446 N.Y.S.2d 62, 64 (1st Dept. 1982) (in granting motion for permissive intervention, Special Term "had to find . . ., implicitly, that a cause of action was stated. Otherwise, there would be no reason for the [CPLR 1014] requirement that pleadings be annexed on a motion for intervention"); Matter of Virgo v. Zoning Bd. of Appeals, 28 Misc. 2d 886, 887, 212 N.Y.S.2d 586, 587 (Sup. Ct. Monroe Co. 1967) ("without the proposed pleading there is nothing from which the court can determine whether the required intervention would add any usefully new matters to the record of the proceedings under review"). *See also* 12 N.Y. Jud. Council Rep. 228 (1946) ("purpose of . . . accompanying pleading is to enable the court to determine whether the applicant has the right to intervene, or, if not, whether permissive intervention should be granted").

[4] *See. e.g.,* Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 634, 389 N.Y.S.2d 314, 315, 357 N.E.2d 970, 971 (1976) ("complaint should not be dismissed on a pleading motion as long as, when the plaintiff is given the benefit of every possible inference, a cause of action exists"). *See generally* the discussion under CPLR 3211. *See also, e.g.,* Beaumont v. Beaumont, 10 A.D.2d 920, 200 N.Y.S.2d 183 (1st Dept. 1960) (court was "dubious" about whether proposed intervenor had any interest in property that would survive *lis pendens,* but affirmed order that granted motion to intervene); Gross v. County Treasurer of Orange County, 19 Misc. 2d 738, 192 N.Y.S.2d 405 (Orange County Ct. 1959) (Attorney General's motion to intervene was denied because, as a matter of law, he could not establish his claim).

join a suit when none of the existing parties seeks the stranger's joinder.

When the court grants a motion to intervene, whether as of right or by permission, the intervenor becomes a party for all purposes.[5] Accordingly, the intervenor is "at liberty to participate in the litigation, and to take part in the proceedings incident thereto, and the case is open to [it] as to all matters involved."[6] In the unusual circumstance in which a proposed intervenor is already a party, the motion to inter-

[5] *See, e.g.,* New York Cent. R.R. v. Lefkowitz, 19 A.D.2d 548, 548, 241 N.Y.S.2d 114, 115 (2d Dept. 1963) (intervenors "have the same right" as original parties to conduct examinations before trial and to invoke other pretrial procedures before action is placed on calendar); Tru-Matic Mach. & Tool Co. v. Bantz, 196 Misc. 82, 83, 91 N.Y.S.2d 414, 415 (Sup. Ct. Westchester Co. 1949) (after the court grants motion to intervene, "no act or proceeding requiring the Court's permission, after notice to all parties, or the consent of all parties, could be done or taken without notice to the intervening respondents or without their consent"; held that party could not file amended petition without notice to or consent of intervenors, even though original parties had stipulated to amendment before court granted motion to intervene); Incorporated Village of Island Park v. Island Park Long Beach, Inc., 81 N.Y.S.2d 407, 409 (Sup. Ct. Nassau Co.), *aff'd,* 274 A.D. 930, 83 N.Y.S.2d 542 (2d Dept. 1948) (defendant-intervenor "has all the rights of a defendant in any action and is not a defendant for . . . limited purposes"); *See also* 3B Moore's Federal Practice ¶¶ 24.16–24.17; 7C Wright, Miller & Kane, Federal Practice & Procedure § 1920 (1986 and Supp. 1988).

[6] 12 N.Y. Jud. Council Rep. 228 (1946) (discussing former Civil Practice Act predecessor of CPLR intervention statutes). It has been held that the intervenor may not participate in the suit until the court enters an order granting the right to intervene. *See* Brown v. Waryas, 45 Misc. 2d 77, 78, 255 N.Y.S.2d 724, 726 (Sup. Ct. Dutchess Co. 1965). *See also* United Baking Co. v. Bakery and Confectionery Workers' Union, 257 A.D. 501, 506, 14 N.Y.S.2d 74, 81 (3d Dept. 1939) (intervenor may not make motions "until it has been permitted to intervene"). Where the Appellate Division affirms an order that denied a motion to intervene, the proposed intervenor has no standing to appeal other parts of the lower court judgment. *See, e.g.,* Matter of Fink v. Salerno, 105 A.D.2d 489, 490, 481 N.Y.S.2d 445, 446 (3d Dept. 1984).

vene is denied.[7]

In deciding whether to grant a motion to intervene, the court may consider the prospect that the intervenor would unduly complicate the litigation by involving new parties or issues. If undue complication results after intervention has been granted, the court may order a severance (CPLR 603) or may drop one or more parties (CPLR 1003).[8]

Where the state is not a party to an action involving the constitutionality of a state statute, CPLR 1012(b) grants the Attorney General the absolute right to intervene in support of the statute's constitutionality. Where the state Comptroller is not a party to an action involving public retirement benefits or a public retirement system, CPLR 1012(c) grants the Comptroller the absolute right to intervene. In either event, the public official must be notified of

---

[7] *See, e.g.,* Heitner v. Government Employees Ins. Co., 118 Misc. 2d 752, 753 n.1, 461 N.Y.S.2d 195, 196 n.1 (Sup. Ct. Nassau Co. 1983), *rev'd,* on other grounds, 103 A.D.2d 111, 479 N.Y.S.2d 51 (2d Dept. 1984); Donas v. European Am. Bank & Trust Co., 106 Misc. 2d 437, 439, 431 N.Y.S.2d 873, 875 (Sup. Ct. N.Y. Co. 1980) (denying motion to intervene because proposed intervenor was already an interpleaded defendant).

[8] CPLR 603 provides in full:

> In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others.

CPLR 1003 provides in pertinent part:

> Parties may be added or dropped by the court, on motion of any party or on its own initiative, at any stage of the action and upon such terms as may be just. The court may order any claim against a party severed and proceeded with separately.

See discussion under CPLR 603, 1003. *See also* Fed. R. Civ. P. 42(b), 28 U.S.C., which provides in pertinent part:

> The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues . . ..

Rule 42(b) is discussed in 5 Moore's Federal Practice, ch. 42; 9 Wright & Miller, Federal Practice & Procedure §§ 2381–92 (1971 and Supp. 1988).

the pendency of the action. See ¶¶ 1012.01, 1012.09, and 1012.11.

¶ 1014.02. Time for intervention.

CPLR 1012(a) and 1013 each requires that the motion to intervene be "timely." Because timeliness is a condition to intervention, the court has a measure of discretion even when intervention as of right might otherwise be appropriate.[9] What qualifies as "timely" depends on the circumstances of the particular case.[10] Regardless of whether intervention is sought as of right or by permission, "timeliness" is determined on much the same basis. For example, the court may consider whether, at the time the motion is made, intervention would unduly confuse the issues or unduly delay the suit or otherwise prejudice any of the existing

[9] *See, e.g.,* Matter of Buffalo Mall, Inc. v. Assessor & Bd. of Review, 101 A.D.2d 701, 475 N.Y.S.2d 812 (4th Dept. 1984) (affirming order that denied motion to intervene as of right as untimely because motion was not made until after the parties had reached a settlement in a proceeding commenced ten years before the settlement was approved; proposed intervenor admitted that it had received actual notice of the proceedings eight years before moving); Krenitsky v. Ludlow Motor Co., 276 A.D. 511, 513–14, 96 N.Y.S.2d 102, 104–05 (3d Dept.), *appeal dismissed,* 301 N.Y. 609, 93 N.E.2d 497 (1950) (after disclaiming liability and refusing to defend action, insurance company moved to intervene as of right after entry of judgments; motion held untimely because company "not only had full opportunity from the very outset to participate to the full extent which it now desires, but it was urged to do so, and consistently refused throughout the entire progress of the litigation until after judgments were entered"); Forker v. Royal Dev. Co., 189 Misc. 798, 801, 72 N.Y.S.2d 59, 61 (Sup. Ct. Monroe Co. 1947) (denying as untimely motions to intervene as of right because proposed intervenors failed to move for more than a year after learning of commencement of the action).

[10] *See, e.g.,* Matter of Fink v. Salerno, 105 A.D.2d 489, 490, 481 N.Y.S.2d 445, 447 (3d Dept. 1984) ("Whether there was undue delay depends on the facts and circumstances of the case."); Krenitsky v. Ludlow Motor Co., 276 A.D. 511, 513, 96 N.Y.S.2d 102, 104 (3d Dept. 1950), *appeal dismissed,* 301 N.Y. 609, 93 N.E.2d 497 (1950) ("Legislature intended the court to determine, under any given circumstances, the timeliness of the application to intervene").

1012.01, 1012.09, and

iires that the motion to
eliness is a condition to
ure of discretion even
otherwise be appropri-
epends on the circum-
rdless of whether inter-
ermission, "timeliness"
asis. For example, the
ime the motion is made,
he issues or unduly de-
e any of the existing

Assessor & Bd. of Review,
1984) (affirming order that
mely because motion was not
tlement in a proceeding com-
pproved; proposed intervenor
f the proceedings eight years
Co., 276 A.D. 511, 513–14, 96
lismissed, 301 N.Y. 609, 93
y and refusing to defend ac-
e as of right after entry of
npany "not only had full op-
e to the full extent which it
onsistently refused through-
il after judgments were en-
798, 801, 72 N.Y.S.2d 59, 61
nely motions to intervene as
o move for more than a year

105 A.D.2d 489, 490, 481
r there was undue delay de-
ase."); Krenitsky v. Ludlow
02, 104 (3d Dept. 1950), *ap-*
950) ("Legislature intended
umstances, the timeliness of

parties.[11] "Absent a showing of prejudice resulting from delay in seeking intervention, the motion should not be denied as untimely."[12]

¶ 1014.03. Timeliness of motion to intervene.

A motion to intervene may be timely even if the motion is not made until after trial, after entry of judgment, or even on appeal or after the order determining an appeal.[13] On oc-

[11] *See, e.g.,* Matter of Ginsberg v. Lomenzo, 23 N.Y.2d 94, 295 N.Y.S.2d 475, 242 N.E.2d 734 (1968), *rev'g,* 30 A.D.2d 982, 294 N.Y.S.2d 210 (3d Dept. 1968) (reversing order that denied motion to intervene for untimeliness; held that the motion should have been granted as a matter of law, in part because there was "an absence of any prejudice" to respondent Secretary of State, who did not oppose the motion); Matter of Norstar Apartments, Inc. v. Town of Clay, 112 A.D.2d 750, 751, 492 N.Y.S.2d 248 (4th Dept. 1985) (rejecting the contention that motion to intervene was untimely, because "[n]o showing has been made that intervention will unduly delay the trial or other disposition" of the proceedings); Matter of Fink v. Salerno, 105 A.D.2d 489, 490, 481 N.Y.S.2d 445, 447 (3d Dept. 1984) (affirming denial of would-be candidates' motion for permissive intervention, which was made the day before trial, because of the "expediency with which election cases must be handled"); Hampton Heights Dev. Corp. v. Board of Water Supply, 136 Misc. 2d 906, 913, 519 N.Y.S.2d 438, 444 (Sup. Ct. Oneida Co. 1987) (motion to intervene was timely when made almost immediately after service of papers in instant action, though after earlier case had been settled).

[12] Matter of Norstar Apartments, Inc. v. Town of Clay, 112 A.D.2d 750, 751, 492 N.Y.S.2d 248, 249 (4th Dept. 1985), *citing* **Treatise.** *See also* Matter of Ginsberg v. Lomenzo, 23 N.Y.2d 94, 295 N.Y.S.2d 475, 242 N.E.2d 734 (1968), *rev'g,* 30 A.D.2d 982, 294 N.Y.S.2d 210 (3d Dept. 1968) (reversing order that denied motion to intervene for untimeliness; held that the motion should have been granted as a matter of law, in part because there was "an absence of any prejudice" to respondent Secretary of State, who did not oppose the motion).

[13] *See, e.g.,* McDermott v. McDermott, 119 A.D.2d 370, 374, 507 N.Y.S.2d 390, 394 (2d Dept. 1986) (exercising discretion to permit intervention on appeal); Civil Serv. Bar Ass'n v. City of N.Y., 64 A.D.2d 594, 407 N.Y.S.2d 160 (1st Dept. 1978) (granting motion to intervene made after passing of time to appeal from judgment confirming arbitrator's final supplemental award), *citing* **Treatise;** Auerbach v. Bennett, 64 A.D.2d 98, 105, 408 N.Y.S.2d 83, 86 (2d Dept. 1978), *modified on other grounds,* 47 N.Y.2d 619, 419 N.Y.S.2d 920, 393 N.E.2d 487 (1979) ("Intervention after final judgment is sparingly granted . . ., but even so the power exists in the court to grant intervention whenever the circumstances justify such an exercise of discretion" under CPLR 1012 or

casion, courts have reopened default judgments and authorized intervention.[14] Intervention at such late stages, however, is only "sparingly granted."[15] Judicial reluctance seems grounded largely on a desire to avoid encouraging would-be intervenors to sit on the sidelines while others fight the battle, and then to seek belatedly to share in the victory. When courts exercise discretion to grant intervention at a late stage, they frequently also impose reasonable conditions that are not inconsistent with constitutional or statutory directive or court rule. For example, intervention may be conditioned on the intervenor's consent to assume a share of the expense borne by one or more of the existing parties. *See* ¶ 1013.03.

1013), *citing* **Treatise**; Matter of Ginsberg v. Lomenzo, 23 N.Y.2d 94, 295 N.Y.S.2d 475, 242 N.E.2d 734 (1968), *rev'g*, 30 A.D.2d 982, 294 N.Y.S.2d 201 (3d Dept. 1968) (Appellate Division denied as untimely a motion to intervene made after an order determining the appeal; Court of Appeals reversed, because intervention was not opposed by respondents and did not prejudice the Secretary of State); Halprin v. New York City Conciliation & Appeals Bd., 521 F. Supp. 529, 533 (S.D.N.Y. 1981) (in federal civil rights actions, the court noted that, in an earlier New York state action, that court might have denied as untimely plaintiffs' post-judgment motion for intervention; the federal court concluded that denial for untimeliness would have been untenable, "because plaintiffs claimed that they were previously unaware of the proceeding because of defendants' alleged due process violations"). *See also* Matter of Unitarian Universalist Church v. Shorten, 64 Misc. 2d 851, 315 N.Y.S.2d 506, 510 (Sup. Ct. Nassau Co. 1970), *vacated on other grounds*, 64 Misc. 2d 1027, 316 N.Y.S.2d 837 (Sup. Ct. Nassau Co. 1970) (denying post-judgment motion for permissive intervention), *citing* **Treatise**.

[14] *See, e.g.*, Gonzalez v. Industrial Bank (of Cuba), 13 A.D.2d 770, 215 N.Y.S.2d 632 (1st Dept. 1961); Stull v. Terry & Tench, Inc., 81 N.Y.S.2d 43 (N.Y. Co. Ct. 1948).

[15] Auerbach v. Bennett, 64 A.D.2d 98, 105, 408 N.Y.S.2d 83, 86 (2d Dept. 1978), *modified on other grounds*, 47 N.Y.2d 619, 419 N.Y.S.2d 920, 393 N.E.2d 487 (1979) ("Intervention after final judgment is sparingly granted . . ., but even so the power exists in the court to grant intervention whenever the circumstances justify such an exercise of discretion" under CPLR 1012 or 1013), *citing* **Treatise**. *See also, e.g.*, Krenitsky v. Ludlow Motor Co., 276 A.D. 511, 96 N.Y.S.2d 102 (3d Dept. 1950), *appeal dismissed*, 301 N.Y. 609, 93 N.E.2d 497 (1950) (denying motion to intervene after entry of judgments).

¶ 1014.04. Applica

Intervention ha
fully incorporated
or proceedings in
CPLR "shall gove
in all courts . . .
inconsistent statu
statutes apply unl
state Constitution

In Article 78 p
erned not by CPL
CPLR 7802(d). I
interested person
rizes broader inte
1012 or 1013. Se

---

16 On the origins a
Practice ¶¶ 24.01–2
Procedure §§ 1901, 1
219–221 (1946); 11 N
Intervention, 45 Yale
party Litigation in the
(1958).

17 *See, e.g., In re* F
693, 695 (1st Dept. 1
statute).

¶ 1014.04. Application to special proceedings and other courts.

Intervention has roots in equity,[16] but the device has been fully incorporated into civil practice and is available in actions or proceedings in any court.[17] CPLR 101 provides that the CPLR "shall govern the procedure in civil judicial proceedings in all courts . . . except where the procedure is regulated by inconsistent statute." Accordingly, the CPLR intervention statutes apply unless application would be inconsistent with the state Constitution or a state statute.

In Article 78 proceedings, for example, intervention is governed not by CPLR 1012 and 1013, but by a specific provision, CPLR 7802(d). By stating that the court "may allow other interested persons to intervene," the specific provision authorizes broader intervention than is authorized by either CPLR 1012 or 1013. See ¶ 1012.03.

---

[16] On the origins and development of intervention, *see* 3B Moore's Federal Practice ¶¶ 24.01–24.05; 7C Wright, Miller & Kane, Federal Practice & Procedure §§ 1901, 1903 (1986 and Supp. 1988); 12 N.Y. Jud. Council Rep. 219–221 (1946); 11 N.Y. Jud. Council Rep. 396 (1945); Moore & Levi, *Federal Intervention,* 45 Yale L.J. 898 (1938); Note, *Developments in the Law—Multiparty Litigation in the Federal Courts,* 71 Harv. L. Rev. 874, 897-906, 988–92 (1958).

[17] *See, e.g., In re* Petroleum Research Fund, 3 A.D.2d 1, 2, 157 N.Y.S.2d 693, 695 (1st Dept. 1956) (construing former Civil Practice Act intervention statute).

Form No. 1013:1

CPLR 1013

Notice of Motion to Intervene When a Statute of the State Confers Right to Intervene in the Discretion of the Court[1]

SUPREME COURT OF THE STATE OF NEW YORK
County of .....

....., Plaintiff, —against— ....., Defendant.	Notice of Motion[2] Index No. ..... Name of Assigned Judge: ..... ☐ Oral argument is requested *(Check box if applicable)*

[1] **Intervention by permission.**—CPLR 1013 provides:

"Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party."

Test for intervention.—Where common questions of law and/or fact can be decided and duplicate actions avoided, which might create inconsistencies in the dual determinations by different judges, intervention is permitted. This test is virtually the same as the test for consolidation of actions. See CPLR 602 and Forms thereto *supra*. Intervention should be denied if it can have no effect in avoiding duality or multiplicity of suits.

See **Weinstein, Korn and Miller** ¶ 1013.01 *et seq.*

[2] Form of papers generally.—See CPLR 2101, *infra*.

Upon the annexed affidavit of . . . . . ., sworn to . . . . . ., 19. ., upon the proposed answer, and upon the pleadings herein, the undersigned will move this court at an IAS Part . ., at the Courthouse, ... Street, ..., New York, on . . . . . ., 19. ., at . . A.M. (*or* P.M.) for an order pursuant to CPLR 1013 permitting . . . . . to intervene in the within action, directing that . . . . . be added as a party defendant, amending the summons and complaint by adding . . . . . as a party defendant, and allowing . . . . . to serve an answer or move with respect to the complaint within twenty days after the entry of an order granting this motion on the ground that (*cite applicable state statute*) confers a right to intervene in the discretion of the court, and for such other and further relief as the court deems proper, including costs of this motion.[3]

The above-entitled action is for (*set forth cause of action*).

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served at least seven days before the return date of this motion.[4] ☐ (*Check box if applicable*)

Dated: . . . . . ., New York
. . . . . ., 19. .

(*Print name*)
Attorney for Intervenor
Address:
Telephone Number:

Motions generally.—See CPLR Article 22, *infra.*

[3] **Costs on motion.**—See CPLR 8106, 8202, and 8301, *infra.*

[4] **Demand for service of answering affidavits.**—See CPLR 2214(b) and 2103(b)(2).

Form No. 1013:2

CPLR 1013

Affidavit Upon Motion to Intervene When a Statute of the State Confers Right to Intervene in the Discretion of the Court[1]

SUPREME COURT OF THE STATE OF NEW YORK
County of .....

....., Plaintiff, —against— ....., Defendant.	Affidavit[2] Index No. ..... Name of Assigned Judge: .....

....., being sworn states:

1. I am the attorney for ....., who is seeking to intervene in the above-entitled action as a party defendant, and as such am familiar with the facts and circumstances had herein.

2. The above-entitled action was brought by plaintiff against defendant for (*set forth nature of action*).

3. On ....., 19. ., a summons and complaint was served upon the defendant. A copy of the summons and complaint is attached as Exhibit A. On ....., 19. ., defendant appeared in this action by his attorney, ..., and served an answer upon ....., the attorney for the plaintiff. A copy of the answer in attached as Exhibit B.

---

[1] **See** Form No. 1013: 1, and Notes thereto, *supra.*

[2] **Form of papers generally.**—See CPLR 2101, *infra.*

Motions generally.—See CPLR Article 22, *infra.*

Affirmation of attorney in lieu of affidavit.—See CPLR 2106, *infra.*

4. (*Set forth facts by which applicant seeks permission to intervene*).

5. Section . . of the . . . . . Law of the State of New York confers upon the applicant on this motion a right to intervene in the discretion of the court in that (set forth facts showing that the applicant comes within the statute as a person having a right to intervene).

6. A copy of the applicant's proposed answer is attached as Exhibit C.

7. (*If order to show cause is sought, set forth reasons*).[3]

8. No previous application has been made for the relief or order sought herein.[4]

WHEREFORE, it is respectfully requested that an order be granted permitting . . . . . to intervene in the discretion of the court, directing that . . . . . be added as a party defendant, directing that the summons and complaint in the above entitled action be amended by adding . . . . . as a party defendant, and allowing . . . . . to serve an answer within twenty days after the entry of an order granting this motion, and for such other relief as the court deems proper.

(*Signature*)

. . . . . .

(*Print name below signature*)

(*Jurat*)

---

[3] **Statement as to reason for proceeding by order to show cause.**—Granting of order to show cause is discretionary, therefore basis should be shown. See CPLR 2214(d), *infra*.

[4] **Statement as to prior application for similar relief.**—Such statement must be included upon all ex parte applications. See CPLR 2217(b), *infra*. Since an order to show cause is signed and has effect before the return date, to this extent it constitutes an ex parte application.

Form No. 1013:3

CPLR 1013

Order Permitting Intervention When a Statute of the State Confers Right to Intervene in the Discretion of the Court[1]

At (IAS Part ..... of) the Supreme Court of the State of New York, County of ....., held at the Courthouse, ... Street, ..., New York, on ....., 19..[2]

PRESENT: Hon....., Justice

....., Plaintiff, —against— ....., Defendant.	Order[3] Index No. .....

..... has moved this court for an order pursuant to CPLR 1013 permitting ..... to intervene in this action on the ground (*specify statute*) confers upon ..... a right to intervene in the above-entitled action in the discretion of the court. In support of the motion, ... has submitted the no-

---

[1] **See** Form No. 1013:1, and Notes thereto, *supra.*

[2] **Form of order; opening.**—Check with the court clerk in the county of your venue for the proper format for an order.

[3] **Form of papers generally.**—See CPLR 2101, *infra.*

Form of order generally.—See CPLR 2219, Forms and Notes thereto, *infra.*

Service of order.—Made by serving a copy. See CPLR 2220(b), *infra.*

Notice of entry.—See CPLR 2220(a), *infra.*

Motions generally.—See CPLR Article 22, *infra.*

tice of motion dated . . . . . ., 19. ., the affidavit of . . . . . ., sworn to . . . . . ., 19. ., with attached exhibits, and the proposed pleading. A hearing on the motion was held on . . . . . ., 19. ..

Upon the foregoing papers, and upon hearing . . . . . ., attorney for the applicant for intervention, in support of the motion, and . . . . . ., attorney for plaintiff, in opposition thereto, and it appearing that the interests of . . . . . will be inadequately represented and that . . . . . will be bound by a judgment herein, and on motion of . . . . . ., attorney for the applicant for intervention, it is ordered that:

1. The motion is granted.

2. . . . . is permitted to intervene in the above entitled action as a party defendant.

3. The summons and complaint in the above entitled action are amended by adding . . . . . as a party defendant.

4. . . . . is permitted to serve his answer upon . . . . . ., attorney for plaintiff, and . . . . . ., attorney for defendant, or otherwise move with respect to the complaint, within twenty days from the date of entry of this order.

Enter.

. . . . . .
(*Print name to be signed or initialed*)
Justice, Supreme Court
. . . . . County

Form No. 1013:4

CPLR 1013

Notice of Motion to Intervene When Movant's Claim or Defense and the Main Action Have A Common Question of Law and Fact[1]

SUPREME COURT OF THE STATE OF NEW YORK
County of .....

....., Plaintiff, —against— ....., Defendant.	Notice of Motion[2] Index No. ..... Name of Assigned Judge: ..... ☐ Oral argument is requested (*Check box if applicable*)

Upon the annexed affidavit of ....., sworn to ....., 19. ., the proposed answer, and upon the pleadings herein, the undersigned will move this court at an IAS Part . ., at the Courthouse, ... Street, ..., New York, on ....., 19. ., at . . A.M. (*or* P.M.) for an order pursuant to CPLR 1013 permitting ..... to intervene in this action on the ground that the movant's claim (or defense) and this action have a common question of law and/or fact, and directing that ..... be added as a party defendant, that the summons and complaint be amended by adding the name of ..... as a party defendant, and allowing ..... to serve an answer or move with respect to the complaint within twenty days after the entry of an order granting this motion and for such other

[1] **See** Form No. 1013: 1, and Notes thereto, *supra.*

[2] **Form of papers generally.**—See CPLR 2101, *infra.*

Motions generally.—See CPLR Article 22, *infra.*

and further relief as the court deems proper, including costs of this motion.[3]

The above-entitled action is for (*set forth cause of action*).

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served at least seven days before the return date of this motion.[4] ☐ (*Check box if applicable*)

Dated: ....., New York
....., 19..

(*Print name*)
Attorney for .....
Address:
Telephone Number:

To: (*Print name*)
Attorney for Plaintiff
Address:
Telephone Number:

To: (*Print name*)
Attorney for Defendant
Address:
Telephone Number:

---

[3] **Costs on motion.**—See CPLR 8106, 8202, and 8301, *infra.*

[4] **Demand for service of answering affidavits.**—See CPLR 2214(b) and 2103(b)(2).

Form No. 1013:5

CPLR 1013

Affidavit in Support of Motion to Intervene When Movant's Claim or Defense and the Main Action Have A Common Question of Law and Fact; General Form[1]

SUPREME COURT OF THE STATE OF NEW YORK
County of .....

....., Plaintiff, —against— ....., Defendant.	Affidavit[2] Index No. ..... Name of Assigned Judge: .....

....., being sworn states:

1. I am the attorney for ....., who is seeking to intervene in the above-entitled action as a party defendant, and as such am familiar with the facts and circumstances had herein.

2. The above-entitled action was brought by plaintiff against defendant for (*set forth nature of action*).

3. On ....., 19. ., a summons and complaint was served upon the defendant. A copy of the summons and complaint is attached as Exhibit A. On ....., 19. ., defendant appeared in this action by his attorney, ..., and served an answer upon ....., the attorney for the plaintiff. A copy of the answer in attached as Exhibit B.

---

[1] **See** Form No. 1013:1, and Notes thereto, *supra*.

[2] **Form of papers generally.**—See CPLR 2101, *infra*.

Motions generally.—See CPLR Article 22, *infra*.

Affirmation of attorney in lieu of affidavit.—See CPLR 2106, *infra*.

4. (*Set forth facts by which applicant seeks permission to intervene*).

5. . . . . 's claim (or defense), as alleged in the proposed answer, a copy of which is attached as Exhibit C, and the main action have common questions of law and/or fact in that (set forth facts showing common questions of law and/or fact).

6. Intervention by . . . . . will neither delay the determination of the above-entitled action nor prejudice the substantial rights of any party.

7. (*If order to show cause is sought, set forth reasons*).[3]

8. No previous application has been made for the relief or order sought herein.[4]

WHEREFORE, it is respectfully requested that an order be granted permitting . . . . . to intervene, directing that . . . . . be added as a party defendant, directing that the summons and complaint in the above entitled action be amended by adding . . . . . as a party defendant, and allowing . . . . . to serve an answer within twenty days after the entry of an order granting this motion, and for such other relief as the court deems proper.

(*Signature*)

. . . . . .

(*Print name below signature*)

(*Jurat*)

---

[3] **Statement as to reason for proceeding by order to show cause.**—Granting of order to show cause is discretionary, therefore basis should be shown. See CPLR 2214(d), *infra*.

[4] **Statement as to prior application for similar relief.**—Such statement must be included upon all ex parte applications. See CPLR 2217(b), *infra*. Since an order to show cause is signed and has effect before the return date, to this extent it constitutes an ex parte application.

Form No. 1013:7

CPLR 1013

Discretionary Order Permitting Intervention When Movant's Claim or Defense and the Main Action Have A Common Question of Law And Fact[1]

At (IAS Part .....) of the Supreme Court of the State of New York, County of ....., held at the County Courthouse, ... Street, ..., New York, on ....., 19..[2]

PRESENT: HON. .....Justice

....., Plaintiff, —against— ....., Defendant.	Order[3] Index No.....

..... has moved this Court for an order pursuant to CPLR 1013 permitting ..... to intervene in the above entitled action, now pending before this Court, on the ground that movant has a claim (*or* defense) against ..... which in-

[1] **See** Form No. 1013:1 and Notes thereto, *supra.*

[2] **Form of order; opening.**—Check with the court clerk in the county of your venue for the proper format for an order.

[3] **Form of papers generally.**—See CPLR 2101, *infra.*

Form of order generally.—See CPLR 2219, Forms and Notes thereto, *infra.*

Service of order.—Made by serving a copy. See CPLR 2220(b), *infra.*

Notice of entry.—See CPLR 2220(a), *infra.*

Motions generally.—See CPLR Article 22, *infra.*

volves a question of law or fact, common with the one involved in the above entitled action. In support of the motion, ... has submitted the notice of motion dated ....., 19. ., the proposed answer annexed hereto, and the affidavit of ....., sworn to ....., 19. ., with attached exhibits. A hearing on the motion was held on ....., 19. ..

Upon the foregoing papers, and upon hearing ....., attorney for ....., in support of the motion, and ....., attorney for plaintiff, in opposition thereto, and it appearing that ..... has a claim (or defense) against ..... which involves a question of law and/or fact common with the one involved in this action and that intervention will not delay or prejudice the adjudication of the rights of the original parties, on motion of ....., attorney for plaintiff, it is ordered that:

1. The motion is granted.

2. ..... is permitted to intervene in the above entitled action as a party defendant.

3. The summons and complaint in the above entitled action are amended by adding ..... as a party defendant.

4. ..... is permitted to serve his answer upon ....., attorney for plaintiff, and ....., attorney for defendant, or otherwise move with respect to the complaint, within twenty days from the date of entry of this order.

Enter.

.....
(*Print name to be signed or initialed*)
Justice, Supreme Court
..... County

Form No. 1014:1

CPLR 1014

Intervenor's Proposed Answer and Cross-Claim[1]

SUPREME COURT OF THE STATE OF NEW YORK
County of .....

....., Plaintiff, —against— ....., Defendant. ----- ....., Defendant-Intervenor.	Intervenor's proposed answer and cross-claim[2] Index No.....

Defendant-intervenor for his proposed answer alleges:

[1] **Proposed intervention pleading.**—CPLR 1014 provides:

"A motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought."

The pleadings.—An intervenor has all the rights of a party, including the power to institute third-party actions, cross-claims and counterclaims. The possibility that the litigation may be complicated by an intervenor's cross-claim or by his third-party proceedings, is to be considered by the court in deciding whether to permit intervention. If, after intervention is granted, the litigation appears to be in danger of such complication, the court may either order a severance (CPLR 603, *supra*), or may drop one or more parties (CPLR 1003, *supra*). However, it is doubtful whether the court could drop an intervening party, when intervention is obtained as of right under CPLR 1012, *supra*. The court may impose terms and conditions in allowing intervention.

Necessity of proposed pleading.—Intervention may not be allowed when the prospective intervenor does not include in motion papers a proposed pleading setting forth the claim or defense for which intervention is sought.

See **Weinstein, Korn and Miller** ¶ 1014.01 *et seq.*

[2] **Form of papers generally.**—See CPLR 2101, *infra*.

1. This defendant denies each and every allegation contained in paragraphs ....., ..., ... and ..... of the complaint.

2. This defendant denies that he has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph ..... of the complaint.

CROSS-CLAIM AGAINST DEFENDANT, ...

Defendant, in his cross-claim against defendant . ., alleges:

3. At all times mentioned herein this defendant was and still is a licensed real estate broker engaged in business as such at ..... Street, ..., New York.

4. On or about ....., 19. ., defendant ....., employed this defendant to negotiate and effect an exchange of real property owned by the defendant, at ....., Street, ..., New York, for other property in that City.

5. The defendant ..... promised and agreed with this defendant to pay him for such services a commission at the rate of ..... per cent upon the value of the premises owned by the defendant ....., which value was fixed in the agreement between this defendant and the defendant ..... at the sum of $.....

6. This defendant performed all the conditions of such contract on his part.

7. After entering into the agreement with the defendant ..... and on or about ....., 19. ., this defendant entered into an agreement with one ..... by which this defendant and ..... agreed to work together to procure an exchange of the property of the defendant ..... in the manner required by the contract between this defendant and defendant ....., and agreed that, in the event that such an exchange be consummated, this defendant and ..... divide the commissions received from the defendant ..... equally.

8. Under the terms of his employment this defendant ren-

Form of answer generally.—See Form No. 3011: 6, *et seq.*, and Notes thereto, *infra.*

dered services to the defendant . . . . . and solely through his efforts this defendant procured one . . . . . who was the owner of property known as. . . . . .Street in the City of . . . . . who was willing to exchange his property with the premises of . . . .

9. As a result of the efforts of this defendant, under the aforesaid contract and on or about . . . . . ., 19. ., the defendant. . . . . .entered into a contract with . . . . . for the exchange of the properties owned by them.

10. As a result of the foregoing, the defendant . . . . . became indebted to this defendant in the sum of $. . . . . ., no part of which has been paid, although the sum has been demanded.

11. As a result of the agreement between this defendant and . . . . . ., each became entitled to one-half of the commissions required to be paid by the defendant . . . . . to this defendant.

WHEREFORE, this defendant-intervenor demands judgment against the defendant . . . . . for the sum of $. . . . . .with interest and the costs and disbursements of this action.

(*Print name*)
Attorney for Defendant-
Intervenor
Address:
Telephone Number:

Form No. 1014:2

CPLR 1014

Proposed Complaint by Intervenor[1]

SUPREME COURT OF THE STATE OF NEW YORK
County of .....

....., Plaintiff, —against— .....and Company, Defendant.	Intervenor's Proposed Complaint[2]
....., Individually and d/b/a .....Company, Plaintiff-Intervenor.	Index No.....

The intervening plaintiff, ..., alleges:

1. Re-alleges each and every allegation contained in the complaint of the plaintiff, ..., a copy of which is attached as Exhibit A.

2. The within cause of action is brought pursuant to Section .....of the ..... Law of the State of .....

3. The intervening plaintiff, ..., individually and d/b/a .....Company, pursuant to the laws of the State of ....., did not pay, and did become obligated to pay, the plaintiff, ..., various benefits relative to his aforesaid injury.

---

[1] **See** Form No. 1014:1 and Notes thereto, *supra.*

Form.—Adapted from Nardone v. Morris A. Fierberg Company, 40 AD2d 60, 337 NYS2d 884 (3d Dep't 1972), courtesy of Donohue, Bahl, Clayton and Komar, Albany, New York.

[2] **Form of papers generally.**—See CPLR 2101, *infra.*

Form of complaint generally.—See Form No. 3011:1, *et seq.*, and Notes thereto, *infra.*

4. By reason of the payments made to plaintiff, ..., and the obligation to pay as aforeindicated, intervening plaintiff, ..., is entitled to bring this action against the defendant, ...Company, to recover any amount paid, or as to which there will be an obligation to pay to such injured employee.

5. The intervening plaintiff, ..., individually and d/b/a ..... Company, has never been notified in writing, by personal presentation, or by registered or certified mail, of the pendency of the action referred to in paragraph ..... of the within complaint.

6. The intervening plaintiff, ..., individually and d/b/a ..... Company, is entitled to an apportionment of the damages which might be recovered by the plaintiff, ...

7. By reason of the foregoing, the intervening plaintiff, ..., individually and d/b/a ..... Company, demands judgment against the defendant to the extent hereinbefore provided.

WHEREFORE, the intervening plaintiff, ..., individually and d/b/a ..... Company, demands judgment against the defendant to the extent hereinbefore provided.

(*Print name*)
Attorney for Intervenor-Plaintiff
Address:
Telephone Number:

had subsequently been reversed by Court of Appeals, Appellate Division was constrained to reverse, on appeal, order denying motion. Belden-Stark Brick Corp. v. Build Contracting Corp., 1958, 6 A.D.2d 883, 177 N.Y.S.2d 442.

§ 1013. Intervention by permission

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

L.1962, c. 308.

Historical Note

Derivation. C.P.A.1920, § 193–b added L.1946, c. 971.

Practice Commentaries

By Joseph M. McLaughlin

C1013:1. Intervention By Permission. Loss of Consortium.
C1013:2. Intervention By Permission. MVAIC Cases.

C1013:1. Intervention By Permission. Loss of Consortium.

In Millington v. Southeastern Elevator Co., 1968, 22 N.Y.2d 498, 293 N.Y.S.2d 305, 239 N.E.2d 897, the Court of Appeals overruled its prior decisions and held that an action would lie by a wife for loss of consortium caused by an injury to her husband. The court made its new rule retroactive so that where a husband's action for personal injuries is presently pending, "the wife's consortium action, if not timebarred, should be joined with her husband's claim." 22 N.Y.2d at 508, 293 N.Y.S.2d at 312, 239 N.E.2d at 902.

As discussed in C1001:4, *supra*, the quoted language seems to imply that the wife is a necessary party. Accordingly, she may be added to the action under CPLR 1003, or she may seek to intervene under the present section. Either way, a jurisdictional question will arise. Suppose that, when the wife seeks to enter the action, the defendant is no longer subject to personal jurisdiction and that if she were compelled to institute an independent action she would be unable to acquire

the requisite jurisdiction. May the wife in these circumstances use the husband's pending action as a conduit to obtain jurisdiction over the defendant?

It cannot be argued that the defendant's appearance in the husband's action is a submission to in personam jurisdiction as to the wife. See Ex Parte Indiana Trans. Co., 1917, 244 U.S. 456, 37 S.Ct. 717. It is the general rule that an intervening plaintiff must establish his own jurisdiction over the defendant and cannot rely on the jurisdiction created by the prime plaintiff. Restatement, Judgments § 5(h) (1942). Indeed, the cited section of the Restatement seems to require that the intervening plaintiff make a fresh service of process. This, however, seems unnecessarily formalistic, and, it is suggested that if the defendant is subject to potential jurisdiction (in the sense that, if the wife had to sue, she could acquire personal jurisdiction), then she should be permitted to intervene in the husband's action simply by serving a notice of motion and proposed complaint on the defendant's counsel. No summons ought to be required. If, on the other hand, there is no potential basis of jurisdiction, the wife should not be permitted to intervene in the action. *Cf.* Everitt v. Everitt, 1958, 4 N.Y.2d 13, 171 N.Y.S.2d 836, 148 N.E.2d 891. For further discussion of the problems of joinder in actions for loss of consortium, see C1001:4, *supra*.

C1013:2. Intervention By Permission. MVAIC Cases.

If a liability insurance company institutes an action to declare the validity of its disclaimer, MVAIC will usually be allowed to intervene in the pending action on the theory that it might ultimately be held liable because of the insurer's disclaimer and, in such event, would be subrogated to the injured victim's rights. MVAIC has a real and substantial interest in the determination of the insurer's disclaimer and some common questions of law and fact are also involved. See, *e. g.*, United Services Automobile Ass'n v. Graham, 1964, 21 A.D. 2d 657, 249 N.Y.S.2d 788; Ryder v. Travelers Ins. Co., 1971, 37 A.D.2d 797, 324 N.Y.S.2d 804. It should be noted that if intervention were not allowed and if the insurer obtained a default declaratory judgment against the claimant and the alleged tortfeasor, MVAIC would not be barred by the doctrine of res judicata from bringing a declaratory action against the insurance company to establish its subrogation rights. See MVAIC v. National Grange Mut. Ins. Co., 1967, 19 N.Y.2d 115, 278 N.Y.S.2d 367, 224 N.E.2d 869.

Note 13

tion. Quentin v. Henderson, 1952, 110 N.Y.S.2d 561.

14. Denial of permission

Beneficiaries under trust created by deceased husband were not entitled to intervene in action by bank to foreclose its lien upon stocks and bonds held by it as collateral to notes of widow, notwithstanding widow had purloined from trust estate the bonds pledged, where only issue raised by intervention was whether bank was bona fide holder for value of bonds pledged, and such issue had already been decided adversely to beneficiaries. First Nat. Bank of Glens Falls v. Parks, 1935, 245 App. Div. 776, 280 N.Y.S. 805, appeal dismissed 270 N.Y. 506, 200 N.E. 292.

City was not entitled to intervene in proceeding on motion by former tenants for order directing clerk of court to restore to them rent deposited pursuant to prior order directing payment of accrued and future rentals to clerk of court and permitting half such deposit to be used to correct offending conditions, where, as between landlord and tenant, right to possession of fund had been determined by landlord's default, city failed to annex any pleadings, and the city made motion under rule 2606 prescribing procedure for obtaining order for payment out of court without initiating a special proceeding. 76 East 123rd St. Corp. v. Frangen, 1971, 67 Misc.2d 281, 323 N.Y.S.2d 737.

Stockholder and director of corporation, which through its attorneys had filed objections to proposed settlement by trustees of accounts in connection with corporation pension plan trust, was not entitled as matter of right to intervene in proceeding for settlement of accounts, and permission to intervene was denied in view of fact that objections asserted by proposed intervenor had already been asserted. In re Spangenberg, 1963, 41 Misc.2d 584, 245 N.Y.S. 2d 501.

In proceeding by father against Board of Education to require Board to change school records so that his children, who were by decree in custody of his divorced and remarried wife and who were registered under stepfather's surname, would be registered by their paternal surname, the wife's motion for leave to intervene and for an adjournment of proceeding would be denied. Young v. Board of Ed. of City of New York, 1952, 114 N.Y.S.2d 693.

15. Motion to dismiss

Even though application for leave to intervene was granted, until entry of order granting right to intervene, the court could not consider the intervenor's motion to dismiss the complaint. Brown v. Waryas, 1965, 45 Misc.2d 77, 255 N.Y.S.2d 724.

§ 1014. Proposed intervention pleading

A motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.

L.1962, c. 308.

Historical Note

Derivation. C.P.A.1920, § 193–b added L.1946, c. 971.

Practice Commentaries

By Joseph M. McLaughlin

C1014:1. Procedure On a Motion To Intervene.

Even when the intervention lies as a matter of right (see CPLR 1012), a court order is required to authorize the intervention. A motion must be made upon notice to all parties.

While the statute sets no time limit for making the motion to intervene, it must be "timely". Intervention will often be disallowed if the court senses that the intervenor stood aside to permit others to fight and then decided to step in at the last moment. Courts are particularly strict with those who were under some kind of a legal duty. See, *e. g.*, Krenitsky v. Ludlow Motor Co., 1950, 276 App.Div. 511, 96 N.Y.S.2d 102, appeal dismissed 301 N.Y. 609, 93 N.E.2d 497; Matter of M. Carl Levine, Morgulas & Foreman, 166 N.Y.L.J. No. 78 (Oct. 21, 1971), p. 2, cols. 3–4. Under certain conditions, a default judgment may be opened and a proposed intervenor will be allowed to intervene. See Gonzales v. Industrial Bank, 1961, 13 A.D.2d 770, 215 N.Y.S.2d 632.

What is "timely" may also depend on the dangers of delay and prejudice to other parties. If the trial is about to start, the motion may be denied. If there is no longer a pending action or proceeding in which to intervene, the proposed intervenor may have to start a special proceeding. See, *e. g.*, 176 East 123rd St. Corp. v. Frangen, 1971, 67 Misc.2d 281, 323 N.Y.S.2d 737 where the City of New York sought, under CPLR 2606(1) (rather than (2)), to reach a fund held by the clerk of the court after the main action had been terminated.

The motion papers under CPLR 1014 must include a "proposed pleading." A failure to comply will generally result in denial of the motion. See, *e. g.*, Del Prete v. Lorenz Schneider Co., 1970, 33 A.D.2d 1021, 308 N.Y.S.2d 68; Carriage Hill, Inc. v. Lane, 1964, 20 A.D.2d 914, 249 N.Y.S.2d 455. However, in Muccioli v. Board of Standards & Appeals, 1964, 42 Misc.2d 1088, 249 N.Y.S.2d 530, petitioner brought an article 78 proceeding to review a ruling of the Board of Standards and Appeals of the City of New York which forbade building of a proposed factory in an area recently rezoned; the court permitted property owners in the vicinity to intervene, under

CPLR 7802(d), as "interested persons," even though no "proposed pleading" was submitted. The court said that "[n]othing in article 78 Civil Practice Law and Rules requires that a motion to intervene be accompanied by a proposed pleading, as does CPLR 1014."

C1014:2. Status of Intervenor After Intervention.

When leave to intervene is granted, the intervenor is treated as an original party-plaintiff or defendant for all intents and purposes. See Incorporated Village of Island Park v. Island Park-Long Beach, Inc., 1948, 81 N.Y.S.2d 407, aff'd 274 App.Div. 930, 83 N.Y.S.2d 542. He may demand a bill of particulars, implead, cross-claim, counterclaim, employ discovery, etc.

Once intervention is granted, the distinction between intervention as of right and permissive intervention has virtually no practical significance. In the federal courts, the distinction is important for jurisdictional and appeal purposes.

Legislative Studies and Reports

This section is based upon part of subd. 3 of section 193–b of the civil practice act.

The first sentence "A person desiring to intervene shall serve a notice of motion to intervene upon all parties who have appeared" and provisions requiring statement of the grounds of the motion and supporting affidavits were omitted as covered by the general rule requiring service upon all parties who have appeared (specified in the Fifth Report as rule 2103(e)) and the general motion rules in article 22 (so specified in the Sixth Report).

See, also, comments respecting historical background from the First Report to the Legislature, set out in note under section 1012.

Official Reports to Legislature for this section:

1st Report Leg.Doc. (1957) No. 6(b), p. 45.

4th Report Leg.Doc. (1960) No. 20, p. 170.

5th Report Leg.Doc. (1961) No. 15, p. 319.

6th Report Leg.Doc. (1962) No. 8, p. 164.

Forms for CPLR

Proposed answer of intervenor—skeleton form, see McKinney's CPLR Forms § 3:148.

Law Review Commentaries

Intervention. 14 Brooklyn L.Rev. 158 (1948).

Intervention by insurance company. 44 Cornell L.Q. 396, 404 (1959).

Intervention in probate proceedings. 11 Buffalo L.Rev. 195 (1961).

Joinder of parties and claims. 33 Cornell L.Q. 597 (1948).

Liability insurance policy defenses —Determination by declaratory actions. 8 Syracuse L.Rev. 27 (1956).

Motion practice in New York. 2 Syracuse L.Rev. 273 (1951).

¶ 1013.01. Intention of drafters.

When the Judicial Council recommended enactment of the former Civil Practice Act predecessor of CPLR 1013 in 1946, the Council lauded permissive intervention as "an instrument for the promotion of trial convenience"[1] that "facilitate[s] the disposal in one action of claims involving common questions of law or fact, and thus avoid[s] both court congestion and undue delay and expense to all parties."[2] In drafting CPLR 1013, the Advisory Committee made a few language changes designed to promote continued liberal construction of the permissive intervention device.[3]

¶ 1013.02. Intervention by permission—in general.

To intervene in a suit by permission, the proposed intervenor must make a timely motion for intervention. See ¶ 1014.02. CPLR 1014 requires that the timely motion papers be "accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought." See ¶ 1014.01.

CPLR 1013 authorizes permissive intervention "when a statute of the state confers a right to intervene in the discretion of the court" or "when the [proposed intervenor's] claim or defense and the main action have a common question of law or fact." Because state statutes authorizing permissive intervention are rare,[4] permissive intervention ordi-

---

[1] 12 N.Y. Jud. Council Rep. 226 (1946).

[2] *Id.*

[3] *See* 5 N.Y. Adv. Comm. Rep. A–341–42 (Advance Draft 1961); *id.* at 319 (1961). *See* ¶ 1012.05, concerning the liberal construction that courts accord to the CPLR intervention statutes. *See also* 1 N.Y. Adv. Comm. Rep. 47 (1957) (citing decisions concerning the liberal construction that courts had accorded to the former Civil Practice Act intervention statute).

[4] *See, e.g.,* CPLR 5227 (authorizing permissive intervention by judgment debtor in special proceeding commenced by judgment creditor against garnishee); F.C.A. § 1035(f) (authorizing permissive intervention in certain child protective proceedings by child's adult sibling, grandparent, aunt, or uncle "for the purpose of seeking temporary custody of the child"; if intervention is granted, intervenor "shall be permitted to participate in all arguments and hearings insofar as they affect the temporary

narily turns on commonality.[5] CPLR 1013 mandates that, in exercising discretion whether to grant a motion for permissive intervention under the "broad language"[6] of the commonality criterion, the court "shall consider whether the intervention will unduly delay the determination of the action

---

custody of the child during fact-finding proceedings, and in all phases of dispositional proceedings"; "intervention shall be liberally granted"); Labor L. § 706(2) (authorizing permissive intervention in state labor relations board hearing concerning a charge that an employer has engaged, or is engaging, in unfair labor practice); S.C.P.A. § 1901(2)(i) (where decedent's estate owns an estate in common in real property, authorizing executor or administrator to intervene in pending partition action on behalf of estate, "if . . . the surrogate approves").

[5] *See, e.g.,* United Services Automobile Ass'n v. Graham, 21 A.D.2d 657, 657, 249 N.Y.S.2d 788, 790 (1st Dept. 1964) (granting Motor Vehicle Accident Indemnification Corp.'s [MVAIC] motion for permissive intervention in declaratory judgment action brought by insurer to disclaim coverage, because MVAIC may ultimately be liable); United Services Automobile Ass'n v. Bass, 21 A.D.2d 655, 252 N.Y.S.2d 684 (1st Dept. 1964) (same); Matter of Kingsport Press, Inc. v. Board of Educ., 50 Misc. 2d 428, 270 N.Y.S.2d 773 (Sup. Ct. N.Y. Co. 1966) (denying union's motion for permissive intervention in suit between a publisher and a board of education, because the union advanced no claim or defense that had a question of law or fact in common with the main action); Brown v. Waryas, 45 Misc. 2d 77, 78, 255 N.Y.S.2d 724, 726 (Sup. Ct. Dutchess Co. 1965) (granting real property owner's motion for permissive intervention in declaratory judgment action; intervenor's proposed answer, which was identical to defendant's, established that his defense had a common question of law or fact with main action). *See also* Ryder v. Travelers Ins. Co., 37 A.D.2d 797, 324 N.Y.S.2d 804 (4th Dept. 1971) (granting MVAIC's motion for permissive intervention, because plaintiff had a judgment against tortfeasor and was therefore entitled to recover against its insurer, which had disclaimed, or against MVAIC); Matter of Teleprompter Manhattan CATV Corp. v. State Bd. of Equalization & Assessment, 34 A.D.2d 1033, 1034, 311 N.Y.S.2d 46, 47 (3d Dept. 1970) (granting motion for permissive intervention where questions of law or fact were "identical"); Matter of Village of Spring Valley v. Village of Spring Valley Housing Auth., 33 A.D.2d 1037, 308 N.Y.S.2d 736 (2d Dept. 1970) (in proceeding to dissolve respondent housing authority, granting motions for permissive intervention by low-income persons residing in substandard housing in the village, because their proposed answer and the defendant's answer raised common questions of law and fact).

[6] United Services Automobile Ass'n v. Graham, 21 A.D.2d 657, 657, 249 N.Y.S.2d 788, 790 (1st Dept. 1964).

or prejudice the substantial rights of any party." This mandate obviously provides ample latitude for the court, in its discretion based on the particular facts, to weigh the interests of the existing parties, the proposed intervenor, and the judicial system.[7] The test of commonality in this context is much the same as the test of commonality for consolidation. See the discussion under CPLR 602.

---

[7] *See, e.g.,* 12 N.Y. Jud. Council Rep. 222 (1946) (in exercising discretion whether to grant permissive intervention, "the court would deny the application . . . when it apparently would produce undue confusion of the issues in a particular case"). *See also, e.g.,* Guma v. Guma, 132 A.D.2d 645, 646, 518 N.Y.S.2d 19, 20 (2d Dept. 1987) (reversing order that denied motion for permissive intervention; intervention "would be likely to illuminate the court's understanding of the issue of custody, and would also be in the interest of judicial economy"); Sterling Nat'l Bank & Trust Co. v. Ambassador Factors Corp., 86 A.D.2d 547, 547, 446 N.Y.S.2d 62, 64 (1st Dept. 1982) (reversing order that granted motion for permissive intervention, where plaintiff had engaged in extensive discovery since joinder of issue and would be "severely prejudiced" by joinder of the proposed plaintiff-intervenor); Matter of Village of Spring Valley v. Village of Spring Valley Housing Auth., 33 A.D.2d 1037, 1037, 308 N.Y.S.2d 736, 738 (2d Dept. 1970) (granting motion for permissive intervention, because intervention would not unduly delay the proceeding or prejudice the substantial rights of any party); Seawall Assocs. v. City of N.Y., 134 Misc. 2d 187, 191, 510 N.Y.S.2d 435, 439 (Sup. Ct. N.Y. Co. 1986) (granting motion for permissive intervention where proposed intervenors "moved swiftly" and existing parties did not claim that intervention would produce prejudice); Matter of Lamboy v. Gross, 129 Misc. 2d 564, 576, 493 N.Y.S.2d 709, 717 (Sup. Ct. N.Y. Co. 1985), *aff'd,* 126 A.D.2d 265, 513 N.Y.S.2d 393 (1st Dept. 1987) (granting motion for permissive intervention in "[t]he interests of judicial economy"); Matter of Regula, 138 Misc. 2d 619, 621, 524 N.Y.S.2d 591 (Sup. Ct. Suffolk Co. 1987) (granting motion for permissive intervention); Matter of Estate of Mayer, 110 Misc. 2d 346, 351, 441 N.Y.S.2d 908, 911 (Surr. Ct. N.Y. Co. 1981) (denying motion for permissive intervention in *cy pres* proceeding, because intervention would require "a time-consuming hearing . . . which would necessarily delay a sale of the property if authorized"); Matter of Estate of Gregory, 102 Misc. 2d 735, 737, 424 N.Y.S.2d 641, 643 (Surr. Ct. Westchester Co. 1980) (denying Attorney General's motion for permissive intervention, because intervention "would not result in any tangible benefit . . . and would unduly delay the determination of the claim"); Matter of Estate of Rubin, 19 Misc. 2d 631, 633, 190 N.Y.S.2d 469, 471 (Surr. Ct. Nassau Co. 1959) (denying motion for permissive intervention, because presence of movant, whose motion papers failed to set forth any claim or defense, "can only serve to delay [the] ultimate disposition").

The practitioner should note that, in Article 78 proceedings, intervention is governed by CPLR 7802(d), which authorizes broader intervention than is authorized by either CPLR 1012 or 1013. See ¶ 1012.03 *supra*.

¶ 1013.02a. Intervenor's interest.

Intervention by permission does not depend on a showing that the proposed intervenor has a direct, personal, or pecuniary interest in the subject of the action.[8] Permissive intervention is appropriate where the proposed intervenor's interest is "real and substantial."[9]

---

[8] *See, e.g.,* Levine v. Town of Oyster Bay, 40 Misc. 2d 605, 607, 243 N.Y.S.2d 656, 657 (Sup. Ct. Nassau Co. 1963) ("the intervenor's interest need not even be direct, personal or pecuniary, an indirect interest in a substantial degree being held enough"); Lipson v. County of Nassau, 35 Misc. 2d 787, 789, 231 N.Y.S.2d 346, 348 (Dist. Ct. Nassau Co. 1962), *rev'd,* on other grounds, 40 Misc. 2d 146, 242 N.Y.S.2d 838 (App. Term 2d Dept. 1963) ("It is no longer necessary that a 'direct', 'personal', or 'pecuniary' interest in the subject of the litigation be shown" as a condition to permissive intervention); Central Westchester Humane Soc'y v. Hilleboe, 202 Misc. 873, 875, 115 N.Y.S.2d 769, 770 (Sup. Ct. Westchester Co. 1952).

[9] *See, e.g.,* Guma v. Guma, 132 A.D.2d 645, 646, 518 N.Y.S.2d 19, 20 (2d Dept. 1987); McDermott v. McDermott, 119 A.D.2d 370, 374, 507 N.Y.S.2d 390, 394 (2d Dept. 1986); Vantage Petroleum v. Board of Assessment Review, 91 A.D.2d 1037, 1037, 458 N.Y.S.2d 632, 633 (2d Dept. 1983), *aff'd on other grounds,* 61 N.Y.2d 695, 472 N.Y.S.2d 603, 460 N.E.2d 1088 (1984); Plantech Housing, Inc. v. Conlan, 74 A.D.2d 920, 921, 426, N.Y.S.2d 81, 82 (2d Dept.), *appeal dismissed,* 51 N.Y.2d 862, 433 N.Y.S.2d 1018, 414 N.E.2d 398 (1980), *citing* **Treatise**; Matter of Hawk, 128 Misc. 2d 931, 932, 491 N.Y.S.2d 912, 913 (Fam. Ct. Queens Co. 1985); Saljen Realty Corp v. Human Resources Admin. Crisis Intervention Servs., 111 Misc. 2d 791, 793, 445 N.Y.S.2d 382, 383 (N.Y.C. Civ. Ct. 1981); Matter of Raymond v. Honeywell, 58 Misc. 2d 903, 904, 297 N.Y.S.2d 66, 67 (Sup. Ct. Dutchess Co. 1968), *citing* **Treatise**. *See also, e.g.,* Matter of Eberlin, 18 A.D.2d 1068, 1069, 239 N.Y.S.2d 569, 571 (1st Dept. 1963) (former Civil Practice Act intervention statute authorized intervention "whenever the substantial rights of the applicant may be affected by the determination of a pending action or proceeding"); Harrison v. Mary Bain Estates, Inc., 2 Misc. 2d 52, 54, 152 N.Y.S.2d 239, 241 (Sup. Ct. Bronx Co. 1956), *aff'd,* 2 A.D.2d 670, 153 N.Y.S.2d 552 (1st Dept. 1956) ("as a general rule, a third party will be permitted to intervene . . . if he is 'ultimately and really interested' in the result of the litigation").

¶ 1013.03. Conditions.

Where intervention is solely by permission, the court may condition its grant of the motion on terms more restrictive than could be imposed on a grant of intervention as of right.[10] See ¶ 1012.06. Whether the basis for intervention is by permission or as of right, however, the court may impose reasonable conditions that are not inconsistent with constitutional or statutory directive or court rule.[11]

---

[10] *See, e.g.,* City of Buffalo v. State Bd. of Equalization and Assessment, 44 Misc. 2d 716, 718, 254 N.Y.S.2d 699, 701 (Sup. Ct. Albany Co. 1964) (granting motion for permissive intervention on conditions that intervenors be represented by same counsel as original defendants and that intervenors not duplicate any steps already completed, except that they could move to dismiss complaint). *See also, e.g.,* Ganem de Issa v. Ganem, 31 A.D.2d 605, 295 N.Y.S.2d 179 (1st Dept. 1968) (held that Special Term improvidently exercised discretion by granting foreign entity's motion for permissive intervention without first holding hearing to determine whether entity was authorized to act on behalf of the country that had created it). *But see* Matter of Expressway Village, Inc. v. Brearly, 112 A.D.2d 718, 492 N.Y.S.2d 206 (4th Dept. 1985) (affirming order that granted school district's motion for permissive intervention in tax certiorari proceeding, but holding that lower court erred by requiring, as a condition of intervention, that the district share cost of respondents' appraisal or procure its own appraisal; because Fourth Department rules merely provide that a party who fails to serve an appraisal report is precluded from offering expert testimony on value, intervenor may decide that it does not wish to expend sums for an appraisal because it does not need independent evidence of value).

[11] *See, e.g.,* Matter of Expressway Village, Inc. v. Brearly *supra,* n.10.

SEE THE TRIBUNE'S RESTAURANT/CATERING GUIDE ON PAGE 18

SOUTH SHORE
LONG BEACH
A DIVISION OF NAUDUS COMMUNICATIONS
TRIBUNE

SERVING
LONG BEACH
ATLANTIC BEACH
LIDO BEACH
POINT LOOKOUT

VOLUME ELEVEN, NUMBER 16 APR. 18-APR. 24, 1996 25¢

OFFICIAL NEWSPAPER OF THE CITY OF LONG BEACH

RENT CONTROL STAYS

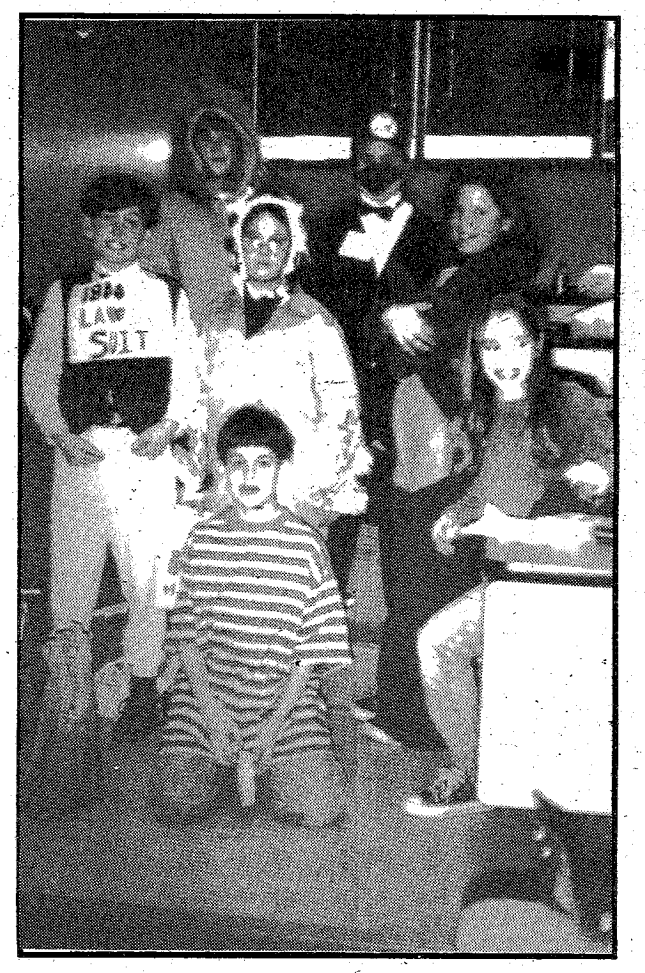
Dem's Dinner Dance A Success

The Long Beach Democratic Committee recently held its Annual Dinner Dance honoring Democrats '95 -- our newly-elected Council members and County Legislators. Pictured with Democratic Leader Eugene Cammarato (center) are, from left, Council members Thomas Kelly and Pearl Weill; County Legislator Bruce Nyman; and Council member Joel Crystal.

Tenants Win As City Council Votes To Retain Rent Stabilization/Pg. 17

Middle School Sixth Grade Teams Take First Place In "Odyssey of the Mind"

Last March, the 6th grade team from Long Beach Middle School took first place in their division, "Amazin' Cruisin," in the Odyssey of the Mind Long Island Regional Tournament held at Hofstra University. The team now goes on to the statewide competition held in Bing-hampton, New York. Members of the team are: Jenevive Nykolak, Dianna Block, Made-laine Susser, Michael Clancy, Jamie Malekoff, Daniel Fischer and Gillian Candelaria.



Tenant Associations Celebrate As City Council Retains Rent Control

by Anthony C. Gruskin

They came looking for a long, hard battle but left feeling victorious, their voices having been heard. A standing room crowd numbering in the hundreds, included members of tenant groups, families, and senior citizens on fixed incomes. They rejoiced as one when the City Council voted unanimously 'to table for eternity' the proposal to abolish rent control.

President Edmund A. Buscemi, Vice President Pearl Weill and Councilmen Joel Crystal, Thomas M. Kelly and Michael G. Zapson agreed to retain rent stabilization for the future to the joyous cheers of those in attendance at Tuesday's meeting. Others felt that this conflict could flare up again, should apartment landlords decide to take the City to court and fight this decision. A few homeowners voiced their concerns that if the City now could not expect increased tax revenues from higher rents, could increased property taxation be very far behind?

The Council explained, "that it believes it is in the City's best interest to keep stability for those residents currently residing in multiple dwelling buildings and to have the owners provide sufficient maintenance to the buildings in which they reside and is vehemently opposed to landlords using harassing tactics to gain vacant apartments and will use such resources as the City or State have to stop such practices if they are found to exist."

In other business, the City approved the issuance of $3,250,000 in serial bonds for the reconstruction of bulkheads and a bond ordinance authorizing the issuance of $200,000 in serial bonds to pay the cost for the acquisition of real property and buildings located at 100 West Pine Street.