

BILL TEXT:

STATE OF NEW YORK

3601

2005-2006 Regular Sessions

IN ASSEMBLY

February 3, 2005

Introduced by M. of A. SCARBOROUGH -- read once and referred to the
Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to motions
addressed to prior orders and repealing certain provisions of such law
and rules relating thereto

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Rule 2217 of the civil practice law and rules, subdivision
2 (d) as added by chapter 355 of the laws of 1986, is amended to read as
3 follows:

4 Rule 2217. [~~Prior motion; ex~~] Ex parte motion; transfer of motion in
5 action.

6 (a) [~~Prior motion. Any motion may be referred to a judge who decided~~
7 ~~a prior motion in the action.~~
8 ~~(b)~~] Affidavit on ex parte motion. An ex parte motion shall be accom-
9 panied by an affidavit stating the result of any prior motion for simi-
10 lar relief and specifying the new facts, if any, that were not previous-
11 ly shown.

12 [~~(c)~~] (b) Transfer of motion. If a motion is made to a judge who is
13 or will be for any reason unable to hear it, it may be transferred by
14 order of [~~such judge or by written stipulation of the parties~~] the court
15 to any other judge to whom it might originally have been made.

16 [~~(d) Rules of the chief administrator of the courts. The chief admin-
17 istrator may by rule exclude motions within a department, district or
18 county from the operation of subdivisions (a) and (c) of this rule.~~]

19 § 2. Rule 2221 of the civil practice law and rules is REPEALED and a
20 new rule 2221 is added to read as follows:

21 Rule 2221. Motions addressed to prior orders. (a) A motion (1) to
22 stay, vacate or modify an order, (2) for leave to appeal an order pursu-
23 ant to subdivision (c) of section 5701, or (3) for leave to reargue or
24 renew a prior motion shall be made returnable before the judge who

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 decided the prior motion, unless such judge is unable to hear it by
 2 reason of departure from office, disability, disqualification or other
 3 extraordinary reason.

4 (b) A motion for leave to reargue:

5 (1) shall be identified specifically as such;

6 (2) shall be based upon material matters of fact or law allegedly
 7 overlooked or misapprehended by the court in determining the prior
 8 motion, but shall not include any matters of fact not offered on the
 9 prior motion; and

10 (3) shall be made within thirty days after service of a copy of the
 11 order determining the prior motion and written notice of its entry.

12 (c) A motion for leave to renew:

13 (1) shall be identified specifically as such;

14 (2) shall be based upon facts not offered on the prior motion that
 15 would change the prior determination or shall demonstrate that there has
 16 been a material change in the law that would change the prior determi-
 17 nation; and

18 (3) shall contain reasonable justification for the failure to present
 19 such facts on the prior motion.

20 (d) A combined motion for leave to reargue and leave to renew shall
 21 identify separately and support separately each item of relief sought.

22 (e) The court in determining a combined motion for leave to reargue
 23 and leave to renew shall address separately each such aspect of the
 24 motion.

25 (f) If a motion for leave to reargue or leave to renew is granted, the
 26 court may adhere to the determination on the original motion or may
 27 alter that determination.

28 § 3. Subparagraph (viii) of paragraph 2 of subdivision (a) of section
 29 5701 of the civil practice law and rules, as added by chapter 281 of the
 30 laws of 1999, is amended to read as follows:

31 (viii) grants a motion for leave to reargue made pursuant to subdivi-
 32 sion [~~(d)~~] (b) of rule 2221 or determines a motion for leave to renew
 33 made pursuant to subdivision [~~(e)~~] (c) of rule 2221; or

34 § 4. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
 MEMORANDUM IN SUPPORT OF LEGISLATION
 submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A3601

SPONSOR: Scarborough

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to motions addressed to prior orders and repealing certain provisions of such law and rules relating thereto

PURPOSE:

The purpose of this measure is to clarify confusion in current law governing motions addressed to prior orders.

SUMMARY OF PROVISIONS:

This bill amends Rule 2217 of the civil practice law and rules by elimi-

RETRIEVE BILL

nating the definition of "prior action" and clarifying the definition of "transfer of motion."

Rule 2221 is added to define rules governing "motion addressed to prior orders," "motion for leave to re-argue," "motion for leave to renew," and "combined motions for leave to re-argue and leave to renew."

JUSTIFICATION:

As now drawn, the law governing motions addressed to prior orders is loose and flexible. A Judge decides an order and attorneys have the opportunity to renew a motion, re-argue a motion, or take a motion up on appeal. The guidelines and time frames for filing motions to re-argue and renew are vague, often causing much confusion among bench and bar. This bill would set up clear parameters concerning the nature of motions addressed to prior orders, their purpose, when they are appropriate, and when appeals therefrom can be taken. It further specifies that such motions must be made within the thirty days after an order comes down on a prior motion.

LEGISLATIVE HISTORY:

1993-94:

Senate 7491 (Volker)

Codes Committee

Assembly 10831 (Friedman)

Rules Committee

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.
