

BILL TEXT:

STATE OF NEW YORK

4747

2005-2006 Regular Sessions

IN ASSEMBLY

February 14, 2005

Introduced by M. of A. WEPRIN -- Multi-Sponsored by -- M. of A. GORDON
-- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to the
time for service of motion papers

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

1 Section 1. Subdivisions (a), (b) and (c) of rule 2214 of the civil
2 practice law and rules, subdivision (b) as amended by chapter 177 of the
3 laws of 1984, are amended to read as follows:

4 (a) Notice of motion. A notice of motion shall specify the time and
5 place of the hearing on the motion, the name of the assigned judge or
6 justice if one is assigned prior to the time necessary under this rule
7 for service of the notice of motion, the supporting papers upon which
8 the motion is based, the relief demanded and the grounds therefor.
9 Relief in the alternative or of several different types may be demanded.

10 (b) Time for service of notice and affidavits. [~~A~~] (1) For any motion
11 brought under article thirty or thirty-one of this chapter a notice of
12 motion and supporting affidavits, exhibits and memoranda of law shall be
13 served at least [eight] fifteen business days before the time at which
14 the motion is noticed to be heard. Answering affidavits, exhibits and
15 memoranda of law shall be served at least [two] seven business days
16 before such time. [Answering affidavits shall be served at least seven
17 days before such time if a notice of motion served at least twelve days
18 before such time so demands; whereupon any reply affidavits shall be
19 served at least one day before such time] Reply affidavits, exhibits and
20 memoranda of law shall be served at least two business days before such
21 time.

22 (2) For any motion other than one under paragraph one of this subdivi-
23 sion, and other than one for which specific time limitations are
24 provided, a notice of motion and supporting affidavits, exhibits and
25 memoranda of law shall be served at least twenty business days before

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

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1 the time at which the motion is noticed to be heard. Answering affida-
2 vits, exhibits and memoranda of law shall be served at least nine busi-
3 ness days before such time. Reply affidavits, exhibits and memoranda of
4 law shall be served at least two business days before such time.

5 (3) For purposes of this subdivision and rule twenty-two hundred
6 fifteen, business day shall mean any day other than Saturday, Sunday or
7 a public holiday as defined by section twenty-four of the general
8 construction law. Service under paragraph one or five of subdivision (b)
9 of rule twenty-one hundred three completed after five o'clock p.m. shall
10 be considered to have been made on the next business day.

11 (c) Furnishing papers to the court. Each party shall furnish to the
12 court all papers served by him[~~. The moving party shall furnish at the~~
13 ~~hearing all other papers not already in the possession of the court~~
14 ~~necessary to the consideration of the questions involved. Where such~~
15 ~~papers are in the possession of an adverse party, they shall be produced~~
16 ~~by him at the hearing on notice served with the motion papers]~~ or her at
17 least two business days prior to the time at which the motion is noticed
18 to be heard, unless by local administrative rule, some other time for
19 furnishing papers is provided. Such papers shall be furnished to the
20 chambers of the assigned judge or justice, unless some other method or
21 location is provided for by local administrative rule, or by individual
22 rule of the assigned judge or justice. Only papers served and furnished
23 to the court in accordance with the provisions of this rule or any rule
24 promulgated or noticed by the assigned judge or justice shall be read in
25 support of, or in opposition to, the motion, unless the court for good
26 cause shall otherwise direct.

27 § 2. Rule 2215 of the civil practice law and rules, as amended by
28 chapter 132 of the laws of 1980, is amended to read as follows:

29 Rule 2215. Relief demanded by other than moving party. At least
30 [~~three~~ nine business days prior to the time at which the motion is
31 noticed to be heard, a party may serve upon the moving party a notice of
32 cross-motion demanding relief, with or without supporting papers.
33 Cross-motions pursuant to rule thirty-two hundred twelve are permitted
34 only where the original motion is brought pursuant to rule thirty-two
35 hundred twelve. Relief in the alternative or of several different types
36 may be demanded; relief need not be responsive to that demanded by the
37 moving party. Answering affidavits, exhibits and memoranda of law to
38 such cross-motion shall be served at least two business days prior to
39 the time at which the motion is noticed to be heard. The moving party
40 shall not be entitled to serve reply papers.

41 § 3. Paragraphs 2 and 6 of subdivision (b) of rule 2103 of the civil
42 practice law and rules, paragraph 2 as separately amended by chapters
43 461 and 478 of the laws of 1989 and paragraph 6 as amended by chapter
44 367 of the laws of 1999, are amended to read as follows:

45 2. by mailing the paper to the attorney at the address designated by
46 that attorney for that purpose or, if none is designated, at the attor-
47 ney's last known address; service by mail shall be complete upon mail-
48 ing; where a period of time prescribed by law is measured from the
49 service of a paper and service is by mail, or where answering or reply
50 papers are to be served within a period of time prescribed by law meas-
51 ured from a return date, five days shall be added to the prescribed
52 period; or

53 6. by dispatching the paper to the attorney by overnight delivery
54 service at the address designated by the attorney for that purpose or,
55 if none is designated, at the attorney's last known address. Service by
56 overnight delivery service shall be complete upon deposit of the paper

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1 enclosed in a properly addressed wrapper into the custody of the over-
 2 night delivery service for overnight delivery, prior to the latest time
 3 designated by the overnight delivery service for overnight delivery.
 4 Where a period of time prescribed by law is measured from the service of
 5 a paper or where answering or reply papers are to be served within a
 6 period of time prescribed by law measured from a return date and service
 7 is by overnight delivery, one business day shall be added to the
 8 prescribed period. "Overnight delivery service" means any delivery
 9 service which regularly accepts items for overnight delivery to any
 10 address in the state; or
 11 § 4. This act shall take effect on the first of January next succeed-
 12 ing the date on which it shall have become a law.

SPONSORS MEMO:

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

BILL NUMBER: A4747**SPONSOR:** Weprin (MS)**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to the time for service of motion papers**PURPOSE OR GENERAL IDEA OF BILL:**

Amendment of CPLR 2214, 2215, and 2103 (b) to provide a lengthier schedule for service of motion papers, and to address other problems in connection with motion practice.

SUMMARY OF SPECIFIC PROVISIONS:

The statute as amended would:

- Utilize the "business day" concept regarding the time for serving papers ("Business day" shall mean "any day other than Saturday, Sunday or a Public Holiday as defined by section 24 of the General Construction Law.");

- Require that schedules for motions depend on the nature of the motion (For motions brought under Article 30 or 31, the schedule would be set for

15**answering papers:**
SEVEN, and reply:**TWO****BUSINESS DAYS**

prior to return date. For other motions, except those for which specific time limitations are provided, the schedule would be set for

20**answering papers:**
NINE and reply:**TWO****BUSINESS DAYS** prior to

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return date.);

- Require that cross-motions be served

NINE
answering papers:
TWO

BUSINESS DAYS prior to return date;

- Permit cross-motions for summary judgment
ONLY where the original
 motion is brought pursuant to Rule 3212; and

- Require, subject to local administrative rule, that motion papers be
 furnished to the court at least
TWO BUSINESS DAYS prior to return
 date.

JUSTIFICATION:

This legislation would provide a uniform, and lengthier, schedule for
 service of motion papers, and address a number of other problems identi-
 fied in connection with motion practice.

This initial concern is that the time periods under present provisions,
 permitting motions on notice as short as eight days, with opposing
 papers due in six days, are too short. With intervening weekends, a
 party opposing a motion might have as little as five working days to
 prepare papers, and less time if a holiday intervenes. This is obvious-
 ly unfair, since the moving party may have taken a substantial amount of
 time to prepare papers. The net result: disputes over adjournment and
 expenditure of judicial effort on scheduling matters.

A more reasonable and extended schedule should be fixed by the CPLR. A
 party requiring faster relief may always proceed by way of order to show
 cause. But absent such necessity there is no reason why motion practice
 should be a desperate race against time.

Accordingly, the first goal is to provide for reasonable time periods
 for service of answering and reply papers. In that regard, the concept
 of "business day" makes sense. A "business day" would be defined as any
 day except Saturday, Sunday, or a public holiday as set forth in General
 Construction Law.

Next, this bill would provide that schedules, as in the federal courts,
 depend on the nature of the motion. For motions under Articles 30 and
 31 (i.e., technical pleading motions and discovery disputes) the sched-
 ule would be set at 15 business days prior to the return date for
 service of the motion papers, and seven and two days prior for answering
 and reply papers.

For other motions, which include,
INTER ALIA, substantive motions
 under Article 32 and motions as to provisional remedies, the schedule
 would be lengthened to 20 business days prior to the return date, nine
 business days for answering papers, and two business days for reply
 papers.

This should allow motions to be served and fully presented without the
 necessity of having judicial or court personnel intervene on issues of
 routine adjournments.

The bill keeps in place the recognized practice of adding five days (not
 business days) for service by mail, as well as the existing provision
 regarding adding one business day for service by overnight mail. But

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the bill would expand those provisions to cover answering and reply papers.

The bill also would require that service of papers upon an attorney personally or by electronic means must be completed by 5 P.M. This is intended to prevent delivery of papers after normal business hours.

The bill is also intended to address instances where cross-motions for summary judgment have been served, on short notice, when the relief sought by the initial motion related to a discovery dispute. This is "sharp practice" which ought to be eliminated. Accordingly, a cross-motion for summary judgment should only be interposed where the main motion sought such relief. Otherwise, the generally unrestricted use of cross-motions would still be permitted.

In order to avoid unduly short time periods for cross-motions, the schedule would be set so that they must be served nine business days before the return date, with opposing papers two business days before the return date. Reply papers on cross-motions, as a matter of right, would be eliminated because they are believed to be generally unnecessary. Of course, such papers could be served with leave of the court.

Finally, the proposal would codify the practice followed in many courts by requiring the furnishing of papers to the assigned justice two days prior to the return date. This would allow time for review and a "hot bench" on the return date. In counties such as New York County, where this is not the practice, the local rule providing for submission of papers to a central motion part would prevail.

These changes will result in better motion papers because of adequate time to prepare, obviate squabbles on timing and requests for adjournment, and generally improve motion practice.

PRIOR LEGISLATIVE HISTORY:

A. 2620 of 1998. A.3119 of 2000, A.4151 of 2002. A1789 of 2004

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE: First of January following enactment.
