

## BILL TEXT:

## STATE OF NEW YORK

10017

## IN ASSEMBLY

February 16, 2006

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

AN ACT to amend the civil practice law and rules, in relation to stipulation of settlement and to repeal certain provisions of such law relating thereto

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

1 Section 1. Rule 2104 of the civil practice law and rules, as amended  
2 by section 28 of part J of chapter 62 of the laws of 2003, is amended to  
3 read as follows:

4 Rule 2104. Stipulations. An agreement between parties or their attor-  
5 neys relating to any matter in an action, other than one made between  
6 counsel in open court, is not binding upon a party unless it is in a  
7 writing subscribed by [~~him or his~~] the party or the party's attorney or  
8 reduced to the form of an order and entered. [~~With respect to stipu-  
9 lations of settlement and notwithstanding the form of the stipulation of  
10 settlement, the terms of such stipulation shall be filed by the defend-  
11 ant with the county clerk.~~]

12 § 2. Subdivision (d) of rule 3217 of the civil practice law and rules  
13 is REPEALED.

14 § 3. Subdivision (d) of section 8020 of the civil practice law and  
15 rules, as added by section 25 of part J of chapter 62 of the laws of  
16 2003, is amended to read as follows:

17 (d) Filing a stipulation of [~~settlement~~] discontinuance or a voluntary  
18 discontinuance. For filing a [~~stipulation of settlement pursuant to  
19 rule twenty one hundred four of this chapter or a~~] notice, stipulation,  
20 or certificate of discontinuance pursuant to [~~subdivision (d) of~~] rule  
21 thirty-two hundred seventeen of this chapter[~~, the defendant shall file  
22 and pay~~]:

23 1. in the counties within the city of New York, thirty-five dollars in  
24 the supreme court.

25 2. in all other counties, thirty-five dollars in the supreme court and  
26 county court.

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

LBD14479-02-6

A. 10017

2

1 Provided, however, that only one such fee shall be charged for each  
2 notice, stipulation or certificate filed pursuant to this subdivision.  
3 § 4. This act shall take effect on the one hundred eightieth day after  
4 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:** A10017

**SPONSOR:** Weprin

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to stipulation of settlement and to repeal certain provisions of such law relating thereto

**PURPOSE OR GENERAL IDEA OF BILL:** To eliminate a number of technical problems.

**SUMMARY OF SPECIFIC PROVISIONS:**

Amendment of CPLR 2104 to eliminate the filing requirements under that section.

Repeal of CPLR 3217(d).

Amend CPLR 8020 to conform with amendments to CPLR 2104 and 3217( d).

**JUSTIFICATION:** The proposed amendments seek to eliminate a number of technical problems caused by a series of amendments made to the Civil Practice Law and Rules (CPLR) in 2003.

In that year, the legislature passed a series of revenue-enhancing amendments providing, among other things, for the imposition of a \$35 fee in connection with the voluntary dismissal of a civil action. See Laws of 2003, Chapter 62, Part I ("Chapter 62"). However, the changes implemented by Chapter 62 were confusing and internally contradictory, and have been widely criticized. See, e.g., D. Siegel, Practice Review #136-137; D. Siegel, "Outside Counsel," New York Law Journal, July 14, 2003 p.4; P. Aloe, Civil Practice, 54 Syracuse Law Rev: 101, 108-110 (2004). The proposed amendment leaves intact the legislative goal of increasing revenues, but eliminates some unintended and undesirable effects wrought by Chapter 62.

Prior to the enactment of Chapter 62, CPLR 2104 merely provided for the enforceability of out-of-court agreements between parties of their attorneys by requiring written and subscribed stipulations of court orders. As part of its revenue-raising effort, Chapter 62 added a requirement that "the terms" of a "stipulation of settlement" must be "filed by the defendant with the county clerk." Chapter 62 effected two other related changes; first, it amended the CPLR 3217 to require that "notices, stipulations or certificates" of discontinuance "be filed with the county clerk by the defendant" (see CPLR 3217

## RETRIEVE BILL

d); and second, it amended CPLR 8020 to require the payment of a \$35 filing fee upon the filing of a "stipulation of settlement" or "notice, stipulation or certificate of discontinuance." (See CPLR 9020( d)).

The Chapter 62 amendments had two principal undesired results.

First the amendments in CPLR 2104 and 80230 introduced a term (the "stipulation of settlement") that is not referred to elsewhere in the CPLR, and whose relationship to the more common "stipulation of discontinuance" was not clearly defined. This, in turn raised a question as to whether parties were now required to disclose the terms of confidential settlements, an interpretation that is in no way suggested by the revenue-enhancing goal of Chapter 62, and that has been strongly criticized by commentators. See Siegel, *New York Practice* 3d, (2003-2004 Supplement); Aloe, *Civil Practice*, 54 *Syracuse Law Rev.* 101, 108-110 (2004); Alexander, 2003 *Supplementary Practice Commentaries N.Y. C.P.L.R. C2104:2 7B McKinney's 2005 Pocket Part* p.160. By deleting the requirement for filing a "stipulation of settlement," this bill does not impair the revenue-enhancing goals of Chapter 62, because CPLR 3217(a) and 8020 (discussed below) will continue to require the filing of "stipulation

s of discontinuance" accompanied by payment of fees. Moreover, the deletion of this requirement will confirm the prevailing understanding that Chapter 62 was not intended to require parties to file the particulars of confidential settlements with the clerk of the court.

Second, the Chapter 62 amendments needlessly created the internal inconsistencies within the CPLR. Prior to Chapter 62, CPLR 3217(a) required that, where any party sought a voluntary dismissal without an order of the court, a specified instrument (either a notice or stipulation of discontinuance) had to be filed with the "clerk of the court" (who, for actions in Supreme or County Courts, would be the county clerk). Thus, subsection 3217(d)'s imposition of a filing requirement was entirely unnecessary, as this was already provided for in subsection 3217(a)(1)-(3). Even more disconcerting is the fact that Chapter 62 requires the defendant to file the notice of discontinuance when under CPLR 3217 (a)(1), only the plaintiff would be entitled to file this notice. Indeed, on its face CPLR 3217( d) would require a defendant to make such a filing even before the defendant had been served or filed an answer. Thus, the addition of CPLR 3217 (d) was both unnecessary to achieve the legislative revenue-raising goal, and harmful in that it introduced contradictory and inequitable requirements on the parties.

Accordingly, the proposed amendments seek to eliminate the undesirable effects of Chapter 62 while respecting its revenue-enhancing purpose. Specifically, the proposal would (i) eliminate the filing requirement of CPLR 2104, since this is adequately addressed by CPLR 3217(a); (ii) eliminate CPLR 3217 (d), since absent a court order, an action cannot be discontinued without the filing of a stipulation or notice with the appropriate clerk of the court; and (iii) revise CPLR 8020 to eliminate reference to the deleted portions of CPLR 2104 and 3217 (d).

**PRIOR LEGISLATIVE HISTORY:** New bill.

**FISCAL IMPLICATIONS:** None.

**EFFECTIVE DATE:** This act shall take effect on the one hundred eightieth day after it shall have become a law