

**BILL TEXT:****STATE OF NEW YORK**

4532

2007-2008 Regular Sessions

**IN SENATE**

April 18, 2007

Introduced by Sen. VOLKER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to commencement of a special proceeding

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

- 1 Section 1. Paragraph 1 of subdivision (b) of section 506 of the civil  
 2 practice law and rules is amended to read as follows:  
 3 1. a proceeding against a justice of the supreme court [~~or~~], a judge  
 4 of a county court, a judge of a family court, a judge of the court of  
 5 claims or [~~the court of general sessions~~] a judge of a surrogate's court  
 6 shall be commenced in the appellate division in the judicial department  
 7 where the action, in the course of which the matter sought to be  
 8 enforced or restrained originated, is triable, unless a term of the  
 9 appellate division in that department is not in session, in which case  
 10 the proceeding may be commenced in the appellate division in an adjoining  
 11 judicial department; and  
 12 § 2. This act shall take effect immediately and shall apply to all  
 13 proceedings commenced on or after such date.

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

LBD10934-01-7

**SPONSORS MEMO:**

**NEW YORK STATE SENATE  
 INTRODUCER'S MEMORANDUM IN SUPPORT  
 submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4532

SPONSOR: VOLKER

**TITLE OF BILL:**

An act to amend the civil practice law and rules, in relation to commencement of a special proceeding

This measure is being introduced at the request of the Chief Administrative Judge.

Section 506(b) of the CPLR governs the venue of an Article 78 proceeding brought against a body or officer and sets forth the general rule that such a proceeding is to be commenced in Supreme Court in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty enjoined upon him or her by law, where the proceedings in the course of which the matter sought to be restrained originated, where the material events took place, or where the respondent's principal office is located. Paragraph one of section 506(b), however, carves an exception to this rule where the Article 78 proceeding is brought against a justice of the Supreme Court, judge of the County Court or judge of the Court of General Sessions. Under this exception, the proceeding must be commenced in the Appellate Division in the judicial department where the action in the course of which the matter sought to be restrained originated is triable.

This measure would amend section 506(b)(1) to broaden this exception to include Article 78 proceedings brought against judges of the Court of Claims, the Family Court and the Surrogate's Court. It also would eliminate the statute's obsolete reference to a judge of the Court of General Sessions.

The present section 506(b)(1) exception was adopted for the obvious reason that the Legislature believed it inappropriate for a judge to sit in review of the determination of a judge of equivalent jurisdiction. In such cases, only a higher court - the Appellate Division - should have jurisdiction of the matter. Thus, in its original enactment, as part of section 1287 of the Civil Practice Act (predecessor of the CPLR), the exception prohibited a justice of the Supreme Court from hearing a special proceeding brought against another justice of the Supreme Court. Later, in 1957, the Legislature, recognizing that County Court outside New York City and the Court of General Sessions in the City exercised criminal jurisdiction that was coextensive with that exercised by Supreme Court, broadened the statutory exception so as to bar the latter from hearing special proceedings against judges of those courts. See L. 1957, c. 979

**Bill Jacket: comments of NYS Bar Association Committee on State legislation and sponsor's letter to Governor's Counsel.**

Expansion of the section 506(b)(1) exception, as proposed in this measure, is promoted for the same reason that prompted the 1957 legislation. Along with Supreme Court and County Court, the Court of Claims, the Family Court and Surrogate's Court are regarded as major courts in our trial court system. See NY Const., Art. VI, §1

**establishing these courts as "statewide" courts and providing that the mandates of these courts may be served and executed in the broadest possible area.** The Constitution allows that the jurisdiction of these courts may sometimes overlap, and it permits their judges to serve by cross-assignment on most if not all of these courts and, in such capacity, to hear any of the cases that may come before any of them. That being so, "  
**whether**  
the underlying reason for the present requirement that proceedings

brought against a Supreme Court justice

or County Court judge must be

brought in the Appellate Division instead of before another justice at special term, is to avoid possible

conflict of interest, embarrassment

or criticism, . . . the same underlying reasons might apply, . . . ,

to" each of the other courts added to the exception by this measure. See

L. 1957, c. 979

Bill Jacket: comments of NYS Bar Association Committee on State legislation.

This measure, which would have no fiscal impact upon the State, would take effect immediately.

2006 LEGISLATIVE HISTORY:

Senate 6958-A (Volker)

Codes

Assembly 11306-A (Cymbrowitz)

Codes

