

Memorandum in Support

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #1

May 16, 2007

S. 4532

By: Senator Volker

A. 8187

By: M. of A. Cymbrowitz

Senate Committee: Codes

Assembly Committee: Codes

Effective Date: Immediately

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

LAW AND SECTION REFERRED TO: CPLR § 506(b)(1)

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

CPLR §506(b) provides that, with certain delineated exceptions, “a special proceeding against a justice of the Supreme Court or a judge of a County Court or the Court of General Sessions shall be commenced in the Appellate Division in the Judicial Department where the action, in the course of which the matter sought to be enforced or restrained originated, is triable...”

The Sponsor's Memo states that the purpose of this bill is to broaden the exception under CPLR § 506(b)(1) to encompass judges of the Court of Claims, Family Court and Surrogates Court, and to strike the obsolete reference to the Court of General Sessions.

The Sponsor's Memo indicates a concern that is inappropriate for a judge of equivalent jurisdiction to sit in review of the determinations of a judge of equivalent jurisdiction, who presides in the Court of Claims, Family Court or Surrogates Court. The Sponsor's Memo indicates that this concern was reflected by the State Legislature's previous modification of §1287 of the Civil Practice Act (predecessor of the CPLR).

The legislative intent that the Court of Claims, Family Court and Surrogates Court be recognized as courts of equivalent jurisdiction to the Supreme and County Courts can be found in the statutory scheme relating to appeals. As reflected in the Court of Claims Act § 23, the Family Court Act § 1111, and the Surrogate Court Procedures Act § 2701, orders appealed from each of these courts are directly appealable to the Appellate Division of the department in which the court appealed from is located. The language of each of those provisions either duplicates or echoes that found in CPLR § 5701, which relates to appeals from the Supreme Court or County Court. Implicit in the Appellate structure is that none of these courts is intended to sit in judgment of the determination of any of these other courts.

Having accorded identical status to the Supreme Court, County Court, Court of Claims, Family Court and Surrogates Court for purposes of appellate review, there is no reason to believe that a contrary result should be found with respect to proceedings against jurors rendering these decisions.

The striking of the reference to the Court of General Sessions is consistent with the 1961 Amendment of the State Constitution by which the Court of General Sessions was abolished. See N.Y.Const. Art. IV, §1(a). This part of the measure merely brings CPLR § 506(b) into conformity with the State Constitution.

For the foregoing reasons, the Committee on Civil Practice Law and Rules **SUPPORTS** this legislation.

The person who prepared the Report: David A. Blansky, Esq.

Chair of the Committee: David Ferstendig, Esq.