

Legislation Report

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 32

May 1, 2001

S. 1979

By: Senators Breslin, Gentile,
Hassell-Thompson, Kruger,
Sampson, Stachowski, and
Stavisky

Senate Committee: Codes

Effective Date: Immediately and only
applies to a libel and
slander made on or after the
effective date

AN ACT to amend the civil practice law and rules, in relation to the accrual of a cause of action for a declaratory judgment of libel or slander of a decedent

LAW AND SECTIONS REFERRED TO: CPLR 215

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW & RULES(#9)

THIS BILL IS DISAPPROVED

This bill would amend the Civil Rights Law to allow a spouse, parent or child of a decedent to bring a cause of action for a declaratory judgment for libel or slander of a decedent occurring after, but within five years of, the decedent's death. The bill would also amend CPLR 215 to require that any such action be commenced within one year of the defamatory statement. This latter portion of the bill is consistent with the one-year statute of limitations for other defamation claims.

Initially, we note that, as currently drafted, a conflict exists between the sponsoring memorandum and the proposed bill. The sponsoring memorandum suggests that the commencement of the action is conditioned upon the failure of the tortfeasor to retract the defamatory statement after written request and "[i]f a retraction is issued, the right to a cause of action shall cease." While the bill language requires the plaintiff to request a retraction and to state in general terms the objections to the slanderous or libelous statement, there is no language providing for the extinguishment of the claim in the event that a retraction is issued. The absence of such provision would doubtless be the subject of unintended litigation.

The bill also contains an evidentiary amendment to the Civil Rights Law, making tape recordings with the deceased admissible "subject to all other the evidentiary standards." Presumably, this would include CPLR Article 45's evidentiary standards (and, in particular, the "Dead Man's Statute," CPLR 4519). Further clarity to the bill's evidentiary component and, especially, that component's interplay with CPLR 4519, is required.

Lastly, considerable doubt exists as to the wisdom of creating a heretofore non-existent cause of action in favor of the decedent's next-of-kin which the next-of-kin of the living do not now enjoy, even though reputational harm to the defamed person and the consequent effects on the next-of-kin may be indistinguishable. Under current law, a decedent is not capable of being harmed by an offense to his reputation. Therefore, as a cause of action does not exist in favor of the decedent's estate, according the right to the next-of-kin is misguided.

For the foregoing reasons, this bill is **DISAPPROVED**.

Person Who Prepared The Report: Mitchell J. Banas, Jr., Esq.

Chair of the Committee: Steven M. Critelli, Esq.