

# Legislation Report

## COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 99

May 8, 2002

S. 6658

By: Senator Skelos

A. 10554

By: M. of A. Weprin

Senate Committee: Codes

Assembly Committee: Judiciary

Effective Date: Immediately

**AN ACT** to amend the civil practice law and rules, in relation to the method of computing periods of limitation in actions commenced by filing

**LAW AND SECTIONS REFERRED TO:** Subdivision (c) of section 203 of the civil practice law and rules.

### **THE BILL IS APPROVED**

The proposed amendment is intended to supplement legislation that was drafted by the CPLR Committee and adopted by the Executive Committee of the NYSBA, and which subsequently became law last year. *See* Chapter 473 of the Laws of 2001 (amending CPLR 304 and 306-b). Through an oversight, the CPLR Committee failed to provide a "housekeeping" amendment to CPLR 203(c) to take into account the modified procedure relating to the commencement of special proceedings.

Under CPLR 203(a), "the time within which an action must be commenced . . . shall be computed from the time the cause of action accrued to the time the claim is interposed." Subdivision (c) determines the time of such interposition when the action is "commenced by filing." Currently, the CPLR 203(c) refers to that time when "the summons and complaint or summons with notice is filed" [subparagraph 1]. Also, in rare cases, the time is fixed where the court signs an order after finding circumstances that prevents the immediate filing of the summons and complaint or summons with notice; in the current statute when this occurs the filing date may not be later than five days after the signing of the order [subparagraph 2].

CPLR 304 primarily states the procedure for the commencement of an action by filing, using, as part of the rule, the same language currently found in CPLR 203(c). Last year, at the instance of the Standing Committee on Civil Practice Law and Rules, CPLR

304 and 306-b were amended to bring uniformity to the procedure for the commencement of special proceedings; the amendment, in part, eliminated the need to file the notice of petition with the petition.

The "notice of petition" in a special proceeding is the complement of a "summons" in a civil action and, as a matter of construction, whenever a "summons" is required in an action, a "notice of petition" is construed to be required in a special proceeding. A recent article in the New York Law Journal drew the bar's attention to the fact that the recent amendment to CPLR 304 and 306-b overlooked the ramifications on the present construction of CPLR 203(c), which, in the author's opinion, also should have been amended to take into account the change in procedure. *See attached NYLJ Article.* Our Committee agrees that a change should be made in CPLR 203(c).

The proposed amendment defines the time of interposition as the time when "the action is commenced." Since CPLR 304 presently defines the procedure necessary to commence the action, there is little need to reiterate that procedure in CPLR 203(c). [In fact, the statutory language presently seen in subparagraphs 1 and 2 of together for CPLR 203(c) is tracked in CPLR 304.] When an "action is commenced," the claim is interposed for statute of limitations purposes; if it is interposed within the applicable limitations period, the action is timely.

Thus, the proposed amendment avoids unnecessarily redefining the time when the action is commenced, for that is the role of CPLR 304. It also removes the confusion that might result if the current language were retained. Lastly, it avoids the necessity of further amending CPLR 203(c) if some future amendment were to change the commencement by filing procedure.

As noted above, the OCA Advisory Committee on the Civil Practice Law and Rules has been advised of the proposed amendment and has informally indicated its support of the amendment.

For the foregoing reasons, the bill is **APPROVED**

Person Who Prepared this Report: Paul H. Aloe and Steven M. Critelli

Chair of the Committee: Steven M. Critelli