

## The Survey of New York Practice Table of Contents

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# THE SURVEY OF NEW YORK PRACTICE

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### INTRODUCTION\*

In this last edition of Volume 61, *The Survey* analyzes various developments of recent importance in New York law. In *Morgenstau v. Gold*, the Court of Appeals reversed the Appellate Division, First Department, and upheld a lower court ruling that a dis-

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\* The following abbreviations will be used uniformly through *The Survey*:

New York Civil Practice Law and Rules (McKinney) .....	CPLR
New York Civil Practice Act .....	CPA
New York Criminal Procedure Law (McKinney) .....	CPL
New York Code of Criminal Procedure .....	CCP
Real Property Actions and Proceedings Law (McKinney) .....	RPAPL
Domestic Relations Law (McKinney) .....	DRL
Estates, Powers and Trusts Law (McKinney) .....	EPTL
General Business Law (McKinney) .....	GBL
General Municipal Law (McKinney) .....	GML
General Obligations Law (McKinney) .....	GOL
D. Siegel, <i>New York Practice</i> (1978) .....	SIEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1982) .....	WK&M
<i>The Biannual Survey of New York Practice</i> .....	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i> .....	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i> .....	<i>The Survey</i>

strict attorney has no "clear right" to compel a criminal court judge to restore cases onto the active calendar after they have been removed for specific reasons.

In *People v. Sanchez*, the Criminal Court of New York County held that a motorist charged with driving while intoxicated need not be given *Miranda* warnings before being asked to undergo chemical testing. Moreover, the *Sanchez* court stated that the defendant's uncoerced refusal to submit to chemical testing was admissible into evidence and was not a violation of his right against self-incrimination.

Finally, in *Berkshire Life Insurance Co. v. Fernandez*, the Appellate Division, Second Department, construing CPLR 203(b)(5), held that the use of that section's extension period was available to a plaintiff where the limitation period for commencing an action was fixed by an insurance contract.

The members of Volume 61 hope that the analysis of the topics contained in *The Survey* will be of value to the New York bench and bar.

#### DEVELOPMENTS IN THE LAW

##### *Expanding a trial court's discretion over criminal court calendars*

Traditionally, the inherent power of a trial court to control its calendar has rarely been challenged.<sup>1</sup> However, the current di-

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Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. Leg. Doc. No. 6(b) . . . . .	FIRST REP.
1958 N.Y. Leg. Doc. No. 13 . . . . .	SECOND REP.
1959 N.Y. Leg. Doc. No. 17 . . . . .	THIRD REP.
1960 N.Y. Leg. Doc. No. 120 . . . . .	FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure . . . . .	FINAL REP.

Also valuable are the two joint reports of the Senate Finance Assembly Ways and Means Committee:

1961 N.Y. Leg. Doc. No. 15 . . . . .	FIFTH REP.
1962 N.Y. Leg. Doc. No. 8 . . . . .	SIXTH REP.

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<sup>1</sup> See, e.g., *LTown Ltd. Partnership v. Sire Plan Inc.*, 108 App. Div. 2d 435, 441-42, 489 N.Y.S.2d 567, 572-73 (2d Dep't 1985); *Riglander v. Star Co.*, 98 App. Div. 101, 104-05, 90 N.Y.S. 772, 775 (1st Dep't), *aff'd sub nom.* *Riglander v. Morning Journal Ass'n*, 181 N.Y. 531, 73 N.E. 1131 (1905). See generally SIEGEL § 368, at 466 (court dictates rules governing calendar practice).