

CPLR 2201: Stay Denied Because of Attorney's Conflict of Interest

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ARTICLE 22 — STAY, MOTIONS, ORDERS AND MANDATES

CPLR 2201: Stay denied because of attorney's conflict of interest.

CPLR 2201 provides that the court in which an action is pending may grant a stay of proceedings. While this is a discretionary power,³⁸ such discretion is normally exercised only when other remedies are inadequate and the equities are compelling.³⁹ Stays have been denied when danger of harm to the party requesting the stay is not imminent.⁴⁰ However, pending actions have been stayed when another action for a declaratory judgment that will bear heavily on the first action is brought.⁴¹

The question of what factors should be considered when granting a stay was before the court recently in *Treiber v. Hopson*,⁴² in which the scope of the inquiry was held to include the ethics of the attorney. A stay of a negligence action was requested by defendant's counsel, presumably without his client's knowledge. This attorney had been furnished by the defendant's insurance company. The reason for the request was the initiation of a declaratory judgment action by the insurance company to declare the policy void. This declaratory judgment action was being prosecuted by the same attorney who was representing the defendant in the negligence action. The appellate division denied the stay because the attorney was acting against the best interests of the defendant in contravention of the Canons of Professional Ethics.⁴³

In considering this additional factor, the courts have again moved toward more realistic solutions to the procedural problems caused when an insurance company attorney defends a policy holder.

CPLR 2214: Deficiency in notice held to be procedural defect.

CPLR 2214(b) provides that "a notice of motion . . . shall be served at least eight days before the time at which the motion is noticed to be heard." This period is extended an additional three days when service is made by mail.⁴⁴

³⁸ 7B MCKINNEY'S CPLR 2201, commentary 2 (1963).

³⁹ 2 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 2201.05 (1965).

⁴⁰ *Ibid.* See also *Ticon Corp. v. Emerson Radio & Phonograph Corp.*, 206 Misc. 727, 134 N.Y.S.2d 716 (Sup. Ct. N.Y. County 1954).

⁴¹ *Cf.*, *Hunter v. Hunter*, 10 App. Div. 2d 937, 201 N.Y.S.2d 961 (1st Dep't 1960) (memorandum decision); *Westchester Fire Ins. Co. v. Lipsky*, 9 Misc. 2d 390, 170 N.Y.S.2d 566 (Sup. Ct. N.Y. County 1958).

⁴² 27 App. Div. 2d 151, 277 N.Y.S.2d 241 (3d Dep't 1967).

⁴³ ABA CANONS OF PROFESSIONAL ETHICS Nos. 6, 45.

⁴⁴ CPLR 2103(b)(2).