

Legislative Amendmets Other Than CPLR

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1964) "Legislative Amendmets Other Than CPLR," *St. John's Law Review*: Vol. 38 : No. 2 , Article 52.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol38/iss2/52>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

to the courts with rule 3216 motions prior to September 1 in the hope that the amendment will not be given any effect before that time. It would appear, however, that we are dealing here with what is generally characterized (whether accurately or not) as "procedure." On strictly procedural matters, retroactivity is not a constitutional problem. Matters as substantial as those involved in the long-arm statute, Section 302 of the CPLR, have been held retroactive. Section 10003 of the CPLR mandates the general retroactivity of the entire CPLR. Though one may wonder whether that provision was intended to apply to *amendments* of the CPLR, it would appear to furnish some ground for a judicial determination that the rule 3216 amendment is retroactive. A contrary indication appears, however, from the very fact that the Legislature made the amendment effective September 1, 1964; it could as readily have made it effective immediately if it particularly considered that point.

The amendment represents a policy statement of the Legislature in which there appears to be no inherent factor that makes the policy more important after September 1 than before. The effective date actually used should not be taken as automatic indication of a legislative intent *not* to make the amendment retroactive. The first of September is the traditional starting time for procedural changes in our law. It may well be that it was used for the rule 3216 amendment more out of habit than deliberation. If so, the policy specifically to be enforced after September 1 might be given some impetus before then. The very presence of the amendment makes it susceptible of implementation immediately, were the courts so disposed. An early indication of such judicial attitude would likely discourage the numerous rule 3216 motions that defendants might be expected to make prior to September 1 to avoid the 45-day demand provision of the amendment.

Legislative Amendments Other Than CPLR

The following chapters of the Laws of 1964 affect practice and procedure in the courts. For the reasons previously specified, the list is not exhaustive, though it contains the most significant procedural activities of the Legislature.

Chs.

- 200 } Raises the jurisdiction of the justice of the peace in first class towns to \$1,000.
- 204 } Raises to \$10,000 the monetary jurisdiction, respectively, of
- 243 } the county courts of Saratoga, Franklin and Suffolk
- 255 } Counties.
- 230 } Amends § 231(2) of the RPAPL to omit reference to § 5236 of the CPLR which reference caused serious difficulties to

Chs.

practitioners throughout the state. The provision as amended appears to function independently of the CPLR.

- 359 Amends the Justice Court Act to permit an attorney to issue an execution on a transcribed judgment. Previously only the county clerk could do so on a justice court judgment.
- 404 Amends § 749(2) of the RPAPL to require that the twenty-four hour notice of eviction there provided for be served in the same manner as the notice of petition.
- 437 Amends the CCA and UDCA as to a number of matters, including service of summons, indorsement pleadings, a motion to dismiss a defense, the application of § 3213 of the CPLR in the civil and district courts, disclosure and costs in summary proceedings.
- 439 Makes several changes in the CCA, and makes all district courts (there are such courts at present only in Nassau and Suffolk Counties) courts of record.

Uniform City Court Act

Chapter 497 enacts the UCCA for application in all city courts of the state, except in New York City, effective April 1, 1965. Chapter 498 makes several amendments to the UCCA enacted by chapter 497. For the scope and application of the UCCA, and its effect on the existing court acts of the state's city courts, see Sections 2300-01 of the UCCA and be certain to integrate the amendments made by chapter 498 which, *inter alia*, change the effective date of the UCCA from September 1, 1964 to April 1, 1965. The act is similar to the UDCA, which in turn is modeled on the CCA.

1964 Judicial Conference Changes in the CPLR Rules

The CPLR provisions are either statutes (preceded by a "§" mark) or rules (preceded by "Rule"). The Legislature can amend either category of provision. But Section 229 of the Judiciary Law gives the Judicial Conference the power to "promulgate" (in effect, legislate) changes in, rescission of and additions to the rules. Any such promulgation by the Judicial Conference becomes law, provided that the Legislature does not disapprove it. Of the ten proposals submitted by the Conference in 1964, only one was disapproved by the Legislature. The remaining nine proposals will thus become law on September 1, 1964. The text of the proposals is contained in Appendix A of the Conference's "Report to the 1964 Legislature in Relation to the Civil Practice Law and Rules and Proposed Amendments Adopted Pursuant to Sec-