

# 1964 Judicial Conference Changes in the CPLR Rules

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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-

tion 229 of the Judiciary Law," dated February 1, 1964. The following is a complete list of them, by the proposal number assigned by the Conference:

1. Amends rule 320(b) to strike out the words "at the time of appearance."
2. Amends rule 326(c) regarding fees in connection with the removal of an action from one court to another.
3. Amends rule 2220(b) to do something that will be welcome relief to the bar: it strikes out the word "certified." Henceforth, when a copy of an order must be served, the copy need *not* be certified.
4. Adds a subdivision (e) to rule 3015, providing for automatic admission of the genuineness of a signature to a negotiable instrument unless such genuineness be specifically denied.
5. This was the proposal rejected by the Legislature. It had to do with rule 3024(c) and the time for making a corrective motion.
6. Amends rule 3211(a)(5) to add "and award" after "arbitration," thereby clarifying that the ground of a dismissal under the rule will be that arbitration has been had *and* an award has been made. The dismissal cannot be predicated on an *obligation* to arbitrate (as to which see the stay provisions of § 7503 of the CPLR).
7. Amends rule 4107 to change "the judge" to "a judge," thus clarifying that no particular judge of the court (such as the judge who is to try the case) need be the one to attend the *voir dire*. Any judge of the court will do.
8. Amends rule 4517 to provide that when a witness is disqualified from testifying under the "dead man" statute, § 4519 of the CPLR, such of his testimony as may be available from a prior trial at which it was competent may, under the circumstances set forth in rule 4517, be used at the present trial.
9. Adds a new rule 5532 to permit a stipulation to serve as the equivalent of a certification of the correctness of the record on appeal. This adopts the approach of § 170 of the CPA, at least for purposes of appeal.
10. Amends rule 5531 to provide specifically for the items to be included in the statement filed by the appellant on appeal, and to require such statement in both civil and criminal appeals.