

Memorandum in Support

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #2

May 17, 2007

S. 4245

By: Senator Volker

A. 8188

By: M. of A. Titus

Senate Committee: Codes

Assembly Committee: Codes

Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to issuance of a subpoena to compel the attendance of an incarcerated person in certain cases.

LAW AND SECTION REFERRED TO: CPLR § 2302(b)

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

CPLR §2302(b) sets out, *inter alia*, the circumstances under which the courtroom attendance of an incarcerated individual may be compelled. A Supreme Court Justice has the authority to direct this, pursuant to a writ of habeas corpus under CPLR 7002, and the statute has been amended, most recently in 2004, to provide that courts with more limited jurisdiction have this power as well. The proposed amendment would add New York City Civil Court judges to the present statute, which now includes Surrogates' Court, the Court of Claims, and Family Court.

This amendment makes sense for reasons of both judicial economy and for parties appearing in New York Civil Court. Although it is technically a court of limited jurisdiction, there is a portion of that court's business that involves more significant matters which were removed from Supreme Court pursuant to CPLR §325(d). When a case is transferred on that basis it is not subject to the \$25,000 jurisdictional ceiling. The amendment would allow a Civil Court judge presiding over a §325(d) case to issue a subpoena, obviating the need to have the party seeking to compel the production of an incarcerated witness from commencing a Special Proceeding under Article 70 of the CPLR.

The proposed amendment is limited in its effect, and allows matters which are in Civil Court by reason of a discretionary act of Supreme Court to be litigated under the same procedural rule with respect to incarcerated witnesses as it would have been had it not been removed. Unless there is some sound reason not to do so, in general it is a good practice to have the procedural rules in the various courts of the State work in a consistent manner. This amendment accomplishes this.

For the foregoing reasons, the Committee on Civil Practice Law and Rules **SUPPORTS** this legislation.

The person who prepared the Report: David A. Blansky, Esq.
Chair of the Committee: David L. Ferstendig, Esq.