

## Memorandum in Support

NYSBA #19

June 19, 2014

S. 6128  
A. 808

By: Senator DeFrancisco  
By: M of A Weprin

Senate Committee: Codes  
Assembly Committee: Codes  
Effective Date: Immediately

**AN ACT** to amend the civil practice law and rules, in relation to motions for summary judgment.

CPLR 3212 (a) was amended by Chapter 492 of the Laws of 1996 in an effort to curtail abusive motion practice, in which a motion for summary judgment was often made immediately before trial, resulting in unwarranted delay.

A principal difficulty, which has now arisen as a result of the 1996 amendments, stems from the undefined term "the court." At present, deviations from the 120-day post-Note-of-Issue default deadline may be found in county rules, part rules, individual judge's rules, and decisions within each case. The information -- where published -- is difficult to locate and may not be up-to-date.

Since the Court of Appeals' decision in *Brill v City of New York*, 2 NY3d 648 (2004) held that a failure to comply with the applicable rule renders the motion fatally defective, absent "good cause" shown for the delay, this legislation is needed to make identification of and compliance with the appropriate deadline less burdensome. Indeed, the confusion has already engendered inconsistent Appellate Division decisions on whether confusion concerning the applicable rule is itself "good cause" for missing the shorter deadline (contrast *Crawford v Liz Claiborne, Inc.*, 45 A.D.3d 284 [15t Dept. 2007](#), with *Gomez v Penmark Realty Corp.*, 50 A.D.3d 607 [15t Dept. 2008](#)), and the Court of Appeals' decision in *Crawford v Liz Claiborne, Inc.*, 2008 NY Slip Op 07989 [11 NY3rd 810] October 23, 2008, had to parse the language of two conflicting rules to find that *Brill* did not apply.

This proposed amendment would limit the search for a deadline shorter than the statutory default to one place: the prior Orders in the specific case. It also serves the salutary function of allowing judges more flexibility in setting summary judgment deadlines, taking into account factors unique to each case, such as its complexities, outstanding discovery, number of parties, and the number of parties seeking summary judgment, as well as considerations which may change with time, such as current trial calendar congestion.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation, which is a proposal developed by its Committee on Civil Practice Law and Rules.