



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #13(a)

REQUESTED ACTION: Approval of an affirmative legislative proposal from the Committee on Civil Practice Law and Rules to amend New York Civil Practice Law and Rule § 3212(a).

Attached are proposed legislative language and a supporting memorandum from the Committee on Civil Practice Law and Rules. The committee proposes to amend New York CPLR § 3212(a).

The amendment to § 3212(a) would provide a mechanism for a party served with an untimely summary judgment motion to have the right to first oppose the motion solely on the issue of lateness, without having to choose between interposing in the same papers full opposition on the merits or, by electing to oppose solely on the basis of lateness, run the risk of a determination that opposition on the merits has been waived.

The New York County Lawyers' Association has indicated that it supports this proposal.

The Report will be presented by Robert P. Knapp, III, chair of the Committee on CPLR.