NY CLS CPLR R 2216

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New York

Consolidated Laws Service **>**

Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 22 Stay, Motions, Orders and Mandates (§§ 2201 — 2223)

R 2216. [Repealed]

History

Add, L 1962, ch 308, § 1; amd, L 1973, ch 626, by Judicial Conference (1974); L 1990, ch 584, § 1, eff Aug 17, 1990.

Annotations

Notes

Prior Law:

Earlier rules: RCP 66; Gen Rules Pr 37.

1990 Recommendations of Advisory Committee on Civil Practice:

The Committee recommends the repeal of CPLR 2216 (default on a motion), because the subject matter of the section now is governed adequately by the Uniform Civil Rules for the Trial Courts, and because the section long has been misleading and confusing.

CPLR 2216 provides:

a. In a city having a population of one million or more, where a party demanding relief fails to appear, relief demanded by him shall be denied.

b. Outside a city having a population of one million or more, where a party demanding relief fails to appear, but submits the moving papers to the court, relief demanded by him may be granted.

Read together, these two subdivisions appear to provide that all motions may be submitted without oral argument upstate, but must be orally argued in the courts in New York City. This reading would foreclose the practice authorized by the Uniform Civil Rules for the Trials Courts of permitting motions to be submitted without oral argument. The somewhat bizarre history of this provision does not support such a restrictive reading.

As Professor David D. Siegel points out in his Practice Commentaries to CPLR 2216, the provision originally consisted of what is now subdivision (a), with no geographical limitation. Cognizant that long-standing court rules throughout the state permitted submission of motions, Professor Siegel wrote:

CPLR 2216's requirement to " 'appear' " relates only to the manifesting of an intent to participate in the contested motion; " 'appear' " as used in 2216 does not necessarily mean " 'attend' ", and unless the individual rules of court say contra, a party should be able to " 'appear' " just by timely submission of his papers.

However, the former language of 2216 was so ambiguous that the Legislature moved to protect upstate courts from what it may have perceived as a requirement against any submission of motions. Subdivision (b), added in 1973, provided, in effect, that whatever subdivision (a) meant, it should not apply outside of New York City. Professor Siegel concludes:

All this, if subdivision (a) says what the draftsman of subdivision (b) thinks it says. But since subdivision (a) does not say that at all, subdivision (b) is really unnecessary.

Whatever the individual rules of court may do in a given instance, nothing in CPLR 2216 should be construed to preclude a party from submitting on papers rather than arguing a motion.

An attempt by the Judicial Conference in 1974 to clarify this provision led Professor Siegel to comment:

This writer has spoken to dozens of practitioners about this provision. The Society of Those What Are Baffled by CPLR 2216 could become a formidable political force in New York.

In sum, it is the Committee's opinion that CPLR Rule 2216(a) should not be read as foreclosing the submissions of motions without oral argument in all circumstances in all courts in New York City, and it never has been applied to do that. Court rules and practice from time immemorial to the present have authorized submissions in many different circumstances, as it makes no practical sense to have a blanket prohibition. See 22 NYCRR 202.8(a) (Supreme and County Courts), 206.8(c) (Court of Claims), 207.7(g) (Surrogate's Court), 208.111(b)(3) (Civil Court of the City of New York), 210.9(c) (City Courts) and 212.11(b)(3) (District Courts).

In order to reflect the law in this area as it appears to be universally understood by bench and bar alike, the Committee recommends that CPLR 2216 be repealed in its entirety.