



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
COMMITTEE ON STATE COURTS OF SUPERIOR JURISDICTION**

**A.10503 (M. of A. Weprin)¹
S.7079 (Senator Volker)**

AN ACT to amend the civil practice law and rules, in relation to requiring a party to attach a copy of a proposed amended or supplemental pleading clearly showing the changes

THIS BILL IS APPROVED

On behalf of the New York City Bar, we write to express our support of A.10503/S.7079 which would amend CPLR 3025(b) to require that a party moving to amend a pleading attach a copy of the proposed pleading showing clearly the proposed changes. We believe that this amendment would make it easier for the parties, lawyers, and, especially judges to understand precisely what changes the moving party is seeking.

The City Bar respectfully offers a proposal for the particular language of the amended statute. We believe that the legislation should also amend subdivision (a) of section 3025 to avoid creating an inconsistency between the language in subdivision (a) and the proposed subdivision (b). This inconsistency would result from the legislation's proposal to amend language in subdivision (b) without amending identical language in subdivision (a) of section 3025. Subdivisions (a) and (b) of section 3025 now read as follows:

(a) Amendments without leave. A party may amend *his pleading* once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it. [Emphasis supplied.]

(b) Amendments and supplemental pleadings by leave. A party may amend *his pleading*, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. [Emphasis supplied.]

The proposed legislation would change subdivision (b)'s phrase "*his pleading*" to the gender neutral phrase "*his or her pleading*," without amending the occurrence of "*his pleading*" in subdivision (a). This appears to be an oversight, and the City Bar recommends that the proposed legislation itself be amended to make the phrase in subdivision (a) gender neutral, too.

¹ These bill numbers reflect the 2007-2008 legislative session. To date, they have not been reintroduced.

Finally, the City Bar regards the proposed gender neutral language as reasonable, though not ideal. But while "a pleading," or "its pleading" may be preferable to "his or her pleading" (because "his or her" does not apply to a non-living party like a business or an estate), the phrase "his or her" already appears in thirty-seven other sections of the civil practice law.

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