

## ▶ January Litigation Tip

### ◆ TOPIC: CPLR AMENDMENTS: CPLR 3113(c) CONDUCT OF THE EXAMINATION AND CPLR 3216 WANT OF PROSECUTION

No more potted plants! Horticulturists need not worry, this only applies to *non-party* depositions. CPLR 3113(c) was amended to now permit counsel for a *non-party* appearing at deposition to participate in the deposition and make objections on behalf of the *non-party* in the same manner as counsel for a *party*. The previous rule and case law provided counsel for the *non-party* could appear but not participate, hence, the potted plant. The amendment took effect on September 23, 2014 and applies to all actions pending on that date or commenced on or after said date. The remainder of CPLR 3113(c) is the same. When a deposition of a *party* is taken at the instance of an adverse party, the deponent may be cross examined by his or her own counsel and the cross examination need not be limited to the subject matter of the examination in chief. (The CPLR now includes references to her!)

The New Year brings an amendment to CPLR 3216 to further prevent delays in proceeding with litigation. This CPLR section permits a party or the Court to seek dismissal of the pleadings on terms for want of prosecution. While the condition precedents to dismissal included (1) issue be joined and (2) one year must have elapsed from joinder before seeking such relief, the amended section as of January 1, 2015, adds to the second condition precedent “or six months must have elapsed from the preliminary conference order whichever is later.” The party or Court seeking the relief must still serve a written demand by registered or certified mail on the party against whom the relief is sought to resume prosecution and the party served must file a note of issue within 90 days. A default by the party served to comply with the demand shall serve as a basis for a motion to dismiss. If the written demand is served by the Court, the amendment requires the Court to set forth the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with litigation. Practitioners should keep in mind that unless the order specifies otherwise, the dismissal is not on the merits. CPLR 3216(a), 3216(b)(2)&(3).

*Written by Angela Morcone Giannini, Co-Chair, Litigation Committee  
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## Lawyering Across the Generations: Making it Work at Work

Lisa Denig

On Tuesday, October 28, 2014, the Professional Development Committee, along with the New Lawyers Committee, hosted an informative event entitled “Lawyering Across The Generations; Making it Work at Work.” Marcia Meislin, the guest speaker, involved the participants in an engaging conversation regarding the five different generations that

make up the workplace today.

Her insightful analysis of each of these generations - the Traditionals, the Baby Boomers, Generation X, Millennials (Generation Y), and the 9/11 Generation (Generation Z) - helped attendees understand what historical events influenced these different groups and, subsequently, how that affects the way they conduct themselves

in the workplace.

The participants – who represented almost every different age group – conducted a lively discussion about how to use this information to create a workplace that is more understanding, patient, and ultimately, more efficient.

Many thanks to Keene and Beane for the use of their conference room and to Community Savings Bank for sponsoring our dinner. ▶



Marcia Meislin