STATE OF NEW YORK

5087

2017-2018 Regular Sessions

IN ASSEMBLY

February 6, 2017

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to appeals to the court of appeals on constitutional grounds

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of section 5601 of the civil practice law and rules, paragraph 1 as amended by chapter 532 of the laws of 1963, is amended and two new subdivisions (b-1) and (b-2) are added to read as follows:

(b) Constitutional grounds. An appeal may be taken to the court of appeals as of right:

1. from an order of the appellate division which finally determines an action where there is directly involved **a substantial question relating to** the construction of the constitution of the state or of the United States; and

2. from a judgment of a court of record of original instance which finally determines an action where the only [~~question~~] **issue** involved on the appeal is **a substantial question relating to** the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States.

(b-1) Substantial constitution question. A substantial question raised under subdivision (b) of this section is one calling for the construction or application of:

1. a provision of the United States constitution that has not been conclusively reviewed by the United States supreme court, or that has been conclusively reviewed by the United States supreme court, but the factual circumstances in the appeal are sufficiently unique and different from the federal courts' application of the constitutional provision;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. a provision of the state constitution that has not been conclusively reviewed by the court of appeals; or

3. a provision of the state constitution that has been conclusively reviewed by the court of appeals, but:

(A) the factual circumstances in the appeal are sufficiently unique from the case or cases determined under that provision by the court of appeals; or

(B) there is only one decision reviewing that provision and a dissenting opinion was filed and the appealing party contends that the prior decision should be reconsidered.

(b-2) Res judicata and collateral estoppel effect of a dismissal for failure to raise a substantial constitutional question. An appeal as of right dismissed for failure to raise a substantial constitutional question shall not be deemed an adjudication on the merits of the constitutional question raised on appeal in the same or any other action or court.

§ 2. Subdivision 1 of section 5515 of the civil practice law and rules, as amended by chapter 491 of the laws of 1975, is amended to read as follows:

1. An appeal shall be taken by serving on the adverse party a notice of appeal and filing it in the office where the judgment or order of the court of original instance is entered except that where an order granting permission to appeal is made, the appeal is taken when such order is entered. A notice shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken. **Whenever an appeal as of right is taken to the court of appeals pursuant to subdivision (b) of section five thousand six hundred one of this chapter, the notice of appeal shall also specify which ground or grounds listed in paragraph three of such subdivision apply to the appeal, and contain a brief argument as to the application of said ground or grounds.**

§ 3. Subdivision (a) of rule 5522 of the civil practice law and rules, as amended by chapter 682 of the laws of 1986, is amended to read as follows:

(a) A court to which an appeal is taken may reverse, affirm, or modify, wholly or in part, any judgment, or order before it, as to any party. The court shall render a final determination or, where necessary or proper, remit to another court for further proceedings. A court reversing or modifying a judgment or order without opinion shall briefly state the grounds of its decision. **Whenever the court of appeals dismisses an appeal as of right taken pursuant to subdivision (b) of section five thousand six hundred one of this chapter for failure to raise a substantial constitutional question, the court shall briefly explain the grounds of its finding.**

§ 4. This act shall take effect immediately and shall apply to all actions pending or commenced on and after such effective date.