S T A T E O F N E W Y O R K

8956--A

2009-2010 Regular Sessions

I N A S S E M B L Y

June 16, 2009

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to service of papers by electronic means; to amend chapter 367 of the laws of 1999 amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to filing by electronic means; to repeal subdivision (c) of section 6 of such chapter relating thereto; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 7 of subdivision (b) of rule 2103 of the civil practice law and rules, as added by chapter 367 of the laws of 1999, is amended to read as follows:

7. by transmitting the paper to the attorney by electronic means where and in the manner authorized by the chief administrator of the courts by rule AND, UNLESS SUCH RULE SHALL OTHERWISE PROVIDE, SUCH TRANSMISSION SHALL BE upon the party's written consent. The subject matter heading for each paper sent by electronic means must indicate that the matter being transmitted electronically is related to a court proceeding.

S 2. Subdivisions (a) and (b) of section 6 of chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, subdivision (a) as amended by chapter 369 of the laws of 2007 and subdivision (b) as amended by chapter 504 of the laws of 2005, are amended to read as follows:

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

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(a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing [an experimental] A program [for the commencement by facsimile transmission or by] IN THE USE OF FACSIMILE TRANSMISSION AND electronic means IN THE SUPREME COURT, THE CIVIL COURT OF THE CITY OF NEW YORK, SURROGATE'S COURTS AND THE COURT OF CLAIMS, FOR: (I) THE COMMENCEMENT of civil actions and proceedings [in the supreme court of Albany, Monroe, Westchester, New York, Bronx, Erie, Kings, Queens, Richmond, Nassau, Suffolk, Niagara, Broome, Essex, Onondaga, Sullivan, and Livingston counties, the New York court of claims, the civil court of the city of New York, and the surrogate's court of Chautauqua, Erie, Monroe, Queens and Suffolk counties], AND (II) THE FILING AND SERVICE OF PAPERS IN PENDING ACTIONS AND PROCEEDINGS.

(b) [Participation] (A) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, PARTICIPATION in this program shall be strictly voluntary, and will take place only upon consent OF ALL PARTIES IN THE ACTION OR SPECIAL PROCEEDING; EXCEPT THAT A PARTY'S FAILURE TO CONSENT TO PARTICIPATION SHALL NOT BAR ANY OTHER PARTY TO THE ACTION OR PROCEEDING FROM FILING AND SERVING PAPERS BY FACSIMILE TRANSMISSION OR ELECTRONIC MEANS UPON THE COURT OR ANY OTHER PARTY TO SUCH ACTION OR PROCEEDING WHO HAS CONSENTED TO PARTICIPATION. COMMENCEMENT OF AN ACTION BY ELECTRONIC MEANS OR BY FACSIMILE TRANSMISSION SHALL NOT REQUIRE THE CONSENT OF ANY OTHER PARTY.

(B) IN THE RULES PROMULGATED PURSUANT TO SUBDIVISION (A) OF THIS SECTION, THE CHIEF ADMINISTRATOR MAY ELIMINATE THE REQUIREMENT OF CONSENT TO PARTICIPATION IN THIS PROGRAM IN:

1. THE SUPREME COURT OF NEW YORK COUNTY IN THE FOLLOWING CLASSES OF CASES PROVIDED THAT THE AMOUNT IN CONTROVERSY (EXCLUSIVE OF PUNITIVE DAMAGES, INTEREST, COSTS, DISBURSEMENTS AND COUNSEL FEES CLAIMED) IS OVER $100,000:

(I) BREACH OF CONTRACT (REGARDLESS OF AMOUNT IN CONTROVERSY) OR FIDUCIARY DUTY, FRAUD, MISREPRESENTATION, BUSINESS TORT (INCLUDING BUT NOT LIMITED TO ACTIONS INVOLVING CLAIMS OF UNFAIR COMPETITION), OR STATUTORY AND/OR COMMON LAW VIOLATION WHERE THE BREACH OR VIOLATION IS ALLEGED TO ARISE OUT OF BUSINESS DEALINGS (INCLUDING BUT NOT LIMITED TO SALES OF ASSETS OR SECURITIES; CORPORATE RESTRUCTURING; PARTNERSHIP, SHAREHOLDER, JOINT VENTURE, AND OTHER BUSINESS AGREEMENTS; TRADE SECRETS; RESTRICTIVE COVENANTS; AND EMPLOYMENT AGREEMENTS NOT INCLUDING CLAIMS THAT PRINCIPALLY INVOLVE ALLEGED DISCRIMINATORY PRACTICES);

(II) TRANSACTIONS GOVERNED BY THE UNIFORM COMMERCIAL CODE (EXCLUSIVE OF THOSE CONCERNING INDIVIDUAL COOPERATIVE OR CONDOMINIUM UNITS);

(III) TRANSACTIONS INVOLVING COMMERCIAL REAL PROPERTY, INCLUDING YELLOWSTONE INJUNCTIONS AND EXCLUDING ACTIONS FOR THE PAYMENT OF RENT ONLY;

(IV) SHAREHOLDER DERIVATIVE ACTIONS, WITHOUT CONSIDERATION OF THE MONETARY THRESHOLD;

(V) COMMERCIAL CLASS ACTIONS, WITHOUT CONSIDERATION OF THE MONETARY THRESHOLD;

(VI) BUSINESS TRANSACTIONS INVOLVING OR ARISING OUT OF DEALINGS WITH COMMERCIAL BANKS AND OTHER FINANCIAL INSTITUTIONS;

(VII) INTERNAL AFFAIRS OF BUSINESS ORGANIZATIONS;

(VIII) MALPRACTICE BY ACCOUNTANTS OR ACTUARIES, AND LEGAL MALPRACTICE ARISING OUT OF REPRESENTATION IN COMMERCIAL MATTERS;

(IX) ENVIRONMENTAL INSURANCE COVERAGE;

(X) COMMERCIAL INSURANCE COVERAGE (INCLUDING BUT NOT LIMITED TO DIRECTORS AND OFFICERS, ERRORS AND OMISSIONS, AND BUSINESS INTERRUPTION COVERAGE);

(XI) DISSOLUTION OF CORPORATIONS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES, LIMITED LIABILITY PARTNERSHIPS AND JOINT VENTURES, WITHOUT CONSIDERATION OF THE MONETARY THRESHOLD; AND

(XII) APPLICATIONS TO STAY OR COMPEL ARBITRATION AND AFFIRM OR DISAFFIRM ARBITRATION AWARDS AND RELATED INJUNCTIVE RELIEF PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES INVOLVING ANY OF THE FOREGOING ENUMERATED COMMERCIAL ISSUES, WITHOUT CONSIDERATION OF THE MONETARY THRESHOLD.

PROVIDED, HOWEVER, THE FOLLOWING CASES ARE NOT INCLUDED:

(I) ACTIONS TO COLLECT PROFESSIONAL FEES;

(II) ACTIONS SEEKING A DECLARATORY JUDGMENT AS TO INSURANCE COVERAGE FOR PERSONAL INJURY OR PROPERTY DAMAGE;

(III) RESIDENTIAL REAL ESTATE DISPUTES, INCLUDING LANDLORD-TENANT MATTERS, AND COMMERCIAL REAL ESTATE DISPUTES INVOLVING THE PAYMENT OF RENT ONLY;

(IV) PROCEEDINGS TO ENFORCE A JUDGMENT REGARDLESS OF THE NATURE OF THE UNDERLYING CASE;

(V) FIRST-PARTY INSURANCE CLAIMS AND ACTIONS BY INSURERS TO COLLECT PREMIUMS OR RESCIND NON-COMMERCIAL POLICIES; AND

(VI) ATTORNEY MALPRACTICE ACTIONS EXCEPT AS OTHERWISE PROVIDED IN CLAUSE (VIII) OF SUBPARAGRAPH ONE OF PARAGRAPH (B) OF THIS SUBDIVISION, AND

2. TORT CASES IN SUPREME COURT IN WESTCHESTER COUNTY, AND

3. ONE OR MORE CLASSES OF CASES (EXCLUDING MATRIMONIAL ACTIONS AS DEFINED BY THE CIVIL PRACTICE LAW AND RULES, ELECTION LAW PROCEEDINGS, PROCEEDINGS BROUGHT PURSUANT TO ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES, AND PROCEEDINGS BROUGHT PURSUANT TO THE MENTAL HYGIENE LAW) IN THE SUPREME COURT OF ONE COUNTY OUTSIDE THE CITY OF NEW YORK.

NOTWITHSTANDING THE FOREGOING, THE CHIEF ADMINISTRATOR MAY NOT ELIMINATE THE REQUIREMENT OF CONSENT UNTIL AFTER HE OR SHE SHALL HAVE CONSULTED WITH MEMBERS OF THE ORGANIZED BAR IN ANY COUNTY IN WHICH SUCH ELIMINATION SHALL APPLY, HAVE AFFORDED THEM THE OPPORTUNITY TO SUBMIT COMMENTS WITH RESPECT THERETO, AND HAVE CONSIDERED ANY SUCH COMMENTS.

(C) WHERE THE CHIEF ADMINISTRATOR ELIMINATES THE REQUIREMENT OF CONSENT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, HE OR SHE SHALL AFFORD COUNSEL AND UNREPRESENTED PARTIES THE OPPORTUNITY TO OPT OUT OF THE PROGRAM, VIA PRESENTATION OF A PRESCRIBED FORM TO BE FILED WITH THE CLERK OF THE COURT WHERE THE ACTION IS PENDING. SAID FORM, WHICH SHALL NOT BE PART OF THE CASE RECORD, SHALL PERMIT AN ATTORNEY OR UNREPRESENTED PARTY TO OPT-OUT OF PARTICIPATION IN THE PROGRAM UNDER ANY OF THE FOLLOWING CIRCUMSTANCES, IN WHICH EVENT, HE OR SHE WILL NOT BE COMPELLED TO PARTICIPATE:

(I) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS THE COMPUTER HARDWARE AND/OR CONNECTION TO THE INTERNET AND/OR SCANNER OR OTHER DEVICE BY WHICH DOCUMENTS MAY BE CONVERTED TO AN ELECTRONIC FORMAT; OR

(II) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS THE REQUISITE KNOWLEDGE IN THE OPERATION OF SUCH COMPUTERS AND/OR SCANNERS NECESSARY TO PARTICIPATE. FOR THE PURPOSES OF THIS SUBPARAGRAPH HEREIN, THE KNOWLEDGE OF ANY EMPLOYEE OF AN ATTORNEY, OR ANY EMPLOYEE OF THE ATTORNEY'S LAW FIRM, OFFICE OR BUSINESS WHO IS SUBJECT TO SUCH ATTORNEY'S DIRECTION, SHALL BE IMPUTED TO THE ATTORNEY; OR

(III) WHERE A PARTY IS NOT REPRESENTED BY COUNSEL, HE OR SHE CHOOSES NOT TO PARTICIPATE IN THE PROGRAM.

NOTWITHSTANDING THE FOREGOING, A COURT MAY EXEMPT ANY ATTORNEY FROM BEING REQUIRED TO PARTICIPATE IN THE PROGRAM UPON APPLICATION FOR SUCH EXEMPTION SHOWING GOOD CAUSE THEREFOR.

(D) For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule 2103 of the civil practice law and rules.

S 3. Subdivision (c) of section 6 of chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, is REPEALED.

S 4. Section 10 of chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, as separately amended by chapters 457 and 504 of the laws of 2005, is amended to read as follows:

S 10. This act shall take effect immediately[; provided, however, that the authority of the chief administrator of the courts to promulgate the rules authorized by section 304 and paragraph 7 of subdivision (b) of rule 2103 of the civil practice law and rules, as amended by section one of this act and as added by section four of this act, respectively, shall expire September 1, 2009 when upon such date the amendments made by such sections of this act shall be deemed repealed; and provided further, however, that section six of this act shall expire and be deemed repealed September 1, 2009].

S 5. Notwithstanding any provision of law, a party shall not be required to pay an administrative fee for the use of a credit card or similar device for the payment of a fee in an action or proceeding in which electronic filing or facsimile transmission is used for the commencement of such action or proceeding or the filing and service of papers therein.

S 6. Not later than April 1, 2012, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with the program in the use of electronic means for the commencement of civil actions and proceedings and the service of papers therein as authorized by this act and containing such recommendations for further legislation as he or she shall deem appropriate.

S 7. This act shall take effect on September 1, 2009; provided, however, that no rule adopted pursuant to paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999, as added by section two of this act, shall take effect until at least one hundred eighty days have elapsed after such effective date, and provided that such paragraph (B) shall expire and be deemed repealed September 1, 2012.