

8956--A

2009-2010 Regular Sessions

I N   A S S E M B L Y

June 16, 2009

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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:

1     Section 1. Paragraph 7 of subdivision (b) of rule 2103 of the civil  
2     practice law and rules, as added by chapter 367 of the laws of 1999, is  
3     amended to read as follows:  
4     7. by transmitting the paper to the attorney by electronic means where  
5     and in the manner authorized by the chief administrator of the courts by  
6     rule AND, UNLESS SUCH RULE SHALL OTHERWISE PROVIDE, SUCH TRANSMISSION  
7     SHALL BE upon the party's written consent. The subject matter heading  
8     for each paper sent by electronic means must indicate that the matter  
9     being transmitted electronically is related to a court proceeding.  
10    S 2. Subdivisions (a) and (b) of section 6 of chapter 367 of the laws  
11    of 1999, amending the civil practice law and rules and the judiciary law  
12    relating to authorization of pilot programs permitting use of facsimile  
13    transmission or electronic means to commence an action or special  
14    proceeding, subdivision (a) as amended by chapter 369 of the laws of  
15    2007 and subdivision (b) as amended by chapter 504 of the laws of 2005,  
16    are amended to read as follows:

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

LBD14418-02-9

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

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

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

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

31 (I) BREACH OF CONTRACT (REGARDLESS OF AMOUNT IN CONTROVERSY) OR FIDU-  
32 CIARY DUTY, FRAUD, MISREPRESENTATION, BUSINESS TORT (INCLUDING BUT NOT  
33 LIMITED TO ACTIONS INVOLVING CLAIMS OF UNFAIR COMPETITION), OR STATUTORY  
34 AND/OR COMMON LAW VIOLATION WHERE THE BREACH OR VIOLATION IS ALLEGED TO  
35 ARISE OUT OF BUSINESS DEALINGS (INCLUDING BUT NOT LIMITED TO SALES OF  
36 ASSETS OR SECURITIES; CORPORATE RESTRUCTURING; PARTNERSHIP, SHAREHOLDER,  
37 JOINT VENTURE, AND OTHER BUSINESS AGREEMENTS; TRADE SECRETS; RESTRICTIVE  
38 COVENANTS; AND EMPLOYMENT AGREEMENTS NOT INCLUDING CLAIMS THAT PRINCI-  
39 PALLY INVOLVE ALLEGED DISCRIMINATORY PRACTICES);

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

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

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

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

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

51 (VII) INTERNAL AFFAIRS OF BUSINESS ORGANIZATIONS;

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

54 (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

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

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

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

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

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

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

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

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

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