

4530

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sens. SALAND, FARLEY -- read twice and ordered printed,
and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to estab-
lishing guidelines for information subpoenas

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

1 Section 1. Paragraph 3 of subdivision (a) of rule 5224 of the civil
2 practice law and rules, as amended by chapter 452 of the laws of 2006
3 and the opening paragraph as amended by chapter 552 of the laws of 2006,
4 is amended to read as follows:

5 3. an information subpoena, accompanied by a copy and original of
6 written questions and a prepaid, addressed return envelope. Service of
7 an information subpoena may be made by registered or certified mail,
8 return receipt requested. EACH INFORMATION SUBPOENA SHALL BE SEPARATELY
9 MAILED. Answers shall be made in writing under oath by the person upon
10 whom served, if an individual, or by an officer, director, agent or
11 employee having the information, if a corporation, partnership or sole
12 proprietorship. Each question shall be answered separately and fully and
13 each answer shall refer to the question to which it responds. Answers
14 shall be returned together with the original of the questions within
15 seven days after receipt. Where the person serving the subpoena is a
16 judgment creditor, other than where the state, a municipality or an
17 agency or officer of the state or a municipality is the judgment credi-
18 tor, the following additional rules shall apply:

19 (i) information subpoenas, served on an individual or entity other
20 than the judgment debtor, may be served on an individual, corporation,
21 partnership or sole proprietorship only if the judgment creditor or the
22 judgment creditor's attorney has a reasonable belief that the party
23 receiving the subpoena has in their possession information about the
24 debtor that will assist the creditor in collecting his or her judgment.
25 Any information subpoena served pursuant to this subparagraph shall

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

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1 contain a certification signed by the judgment creditor or his or her
2 attorney stating the following: I HEREBY CERTIFY THAT THIS INFORMATION
3 SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND
4 THAT I HAVE A REASONABLE BELIEF THAT THE PARTY RECEIVING THIS SUBPOENA
5 HAS IN THEIR POSSESSION INFORMATION ABOUT THE DEBTOR THAT WILL ASSIST
6 THE CREDITOR IN COLLECTING THE JUDGMENT. By signing the certification,
7 the judgment creditor or attorney certifies that, to the best of that
8 person's knowledge, information and belief, formed after an inquiry
9 reasonable under the circumstances, that the individual or entity
10 receiving the subpoena has relevant information about the debtor. ANY
11 INFORMATION SUBPOENA SERVED PURSUANT TO THIS SUBPARAGRAPH SHALL BE
12 ACCOMPANIED BY A VERIFICATION STATING THE GROUNDS BY WHICH THE JUDGMENT
13 CREDITOR HAS FORMED THE REASONABLE BELIEF REQUIRED BY THIS SUBPARAGRAPH.
14 FOR PURPOSES OF AN INFORMATION SUBPOENA SERVED ON A FEDERAL OR STATE
15 CHARTERED CREDIT UNION, VERIFICATION SHALL INCLUDE A STATEMENT THAT THE
16 JUDGMENT DEBTOR IS ELIGIBLE TO BECOME A MEMBER OF THE CREDIT UNION.

17 (ii) if an information subpoena, served on an individual or entity
18 other than the judgment debtor, does not contain the certification OR
19 VERIFICATION provided for in subparagraph (i) [of] OR IS NOT MAILED IN
20 ACCORDANCE WITH this paragraph, such subpoena shall be deemed null and
21 void.

22 (iii) if an information subpoena, served on an individual or entity
23 other than the judgment debtor, does contain the certification provided
24 for in subparagraph (i) of this paragraph, the individual, corporation,
25 partnership or sole proprietorship receiving the subpoena, may move to
26 quash the subpoena pursuant to section twenty-three hundred four of this
27 chapter, except that such motion shall be made in the court that issued
28 the underlying judgment.

29 (iv) failure to comply with an information subpoena shall be governed
30 by subdivision (b) of section twenty-three hundred eight of this chap-
31 ter, except that such motion shall be made in the court that issued the
32 underlying judgment.

33 S 2. This act shall take effect immediately.