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

4956

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

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

AN ACT to amend the civil practice law and rules, in relation to the conduct of examinations

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

Section 1. Rule 3113 of the civil practice law and rules, paragraph 2 of subdivision (a) as amended by chapter 98 of the laws of 1993, subdivision (b) as amended by judicial conference proposal number 1 for the year 1977 and subdivision (d) as added by chapter 66 of the laws of 2004, is amended to read as follows:

Rule 3113. Conduct of the examination. (a) Persons before whom depositions may be taken. Depositions may be taken before any of the following persons [except an attorney, or employee of an attorney, for a party or prospective party and except a person who would be disqualified to act as a juror because of interest in the event or consanguinity or affinity to a party]:

1. within the state, a person authorized by the laws of the state to administer oaths;

2. without the state but within the United States or within a territory or possession subject to the jurisdiction of the United States, a person authorized to take acknowledgments of deeds outside of the state by the real property law of the state or to administer oaths by the laws of the United States or of the place where the deposition is taken; and

3. in a foreign country, any diplomatic or consular agent or representative of the United States, appointed or accredited to, and residing within, the country, or a person appointed by commission or under letters rogatory, or an officer of the armed forces authorized to take the acknowledgment of deeds.

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

LBD08715-01-9

Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Authority in (here name the state or country)."

(b) PERSONS BEFORE WHOM DEPOSITIONS MAY NOT BE TAKEN. DEPOSITIONS MAY NOT BE TAKEN BEFORE ANY OF THE FOLLOWING PERSONS:

1. A PARTY OR A PROSPECTIVE PARTY;

2. AN ATTORNEY OR AN EMPLOYEE OF AN ATTORNEY FOR A PARTY OR PROSPECTIVE PARTY;

3. A PERSON WHO WOULD BE DISQUALIFIED TO ACT AS A JUROR BECAUSE OF INTEREST IN THE EVENT;

4. A PERSON WITH CONSANGUINITY OR AFFINITY TO A PARTY; OR

5. A PERSON WHO ENTERS INTO OR PROVIDES SERVICES UNDER A PREFERENTIAL AGREEMENT WITH A PARTY.

(C) FOR THE PURPOSES OF SUBDIVISION (B) OF THIS RULE, "PREFERENTIAL AGREEMENT" MEANS ANY CONTRACTUAL AGREEMENT, WRITTEN OR ORAL, EXCLUSIVE, OR NONEXCLUSIVE WHERE:

1. THE AGREEMENT UNDERMINES THE IMPARTIALITY OF THE COURT REPORTER OR COURT REPORTING AGENCY; OR

2. A COURT REPORTER GIVES OR APPEARS TO GIVE AN EXCLUSIVE ADVANTAGE TO ANY PARTY BY PROVIDING ANY SERVICE, TERM OR CONDITION NOT MADE AVAILABLE TO ALL PARTIES IN AN ACTION. SUCH SERVICES, TERMS AND CONDITIONS INCLUDE BUT ARE NOT LIMITED TO, TIME AND METHOD OF PAYMENT, TIME AND METHOD OF TRANSCRIPT OR ROUGH DRAFT TRANSCRIPT DELIVERY, DATA-BASING OF DEPOSITION TRANSCRIPTS, PROVISION OF COMPUTERIZED REAL-TIME SERVICES, WAIVERS OF CERTAIN FEES OR CHARGES, AND TAKING DEPOSITION SUMMARIES.

(D) IF A DEPOSITION IS TAKEN BY A PERSON DESCRIBED IN SUBDIVISION (C) OF THIS RULE THEN THAT DEPOSITION SHALL BE VOID.

(E) THE PROVISIONS IN SUBDIVISIONS (B), (C) AND (D) OF THIS RULE DO NOT APPLY TO A CONTRACT FOR COURT REPORTING SERVICES FOR A COURT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES OR THIS STATE.

(F) Oath of witness; recording of testimony; objections; continuous examination; written questions read by examining officer. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction, record the testimony. The testimony shall be recorded by stenographic or other means, subject to such rules as may be adopted by the appellate division in the department where the action is pending. All objections made at the time of the examination to the qualifications of the officer taking the deposition or the person recording it, or to the manner of taking it, or to the testimony presented, or to the conduct of any person, and any other objection to the proceedings, shall be noted by the officer upon the deposition and the deposition shall proceed subject to the right of a person to apply for a protective order. The deposition shall be taken continuously and without unreasonable adjournment, unless the court otherwise orders or the witness and parties present otherwise agree. In lieu of participating in an oral examination, any party served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers.

[(c)] (G) Examination and cross-examination. Examination and cross-examination of deponents shall proceed as permitted in the trial of actions in open court. When the deposition of a party is taken at the instance of an adverse party, the deponent may be cross-examined by his own attorney. Cross-examination need not be limited to the subject matter of the examination in chief.

[(d)] (H) The parties may stipulate that a deposition be taken by telephone or other remote electronic means and that a party may participate electronically. The stipulation shall designate reasonable provisions to ensure that an accurate record of the deposition is generated, shall specify, if appropriate, reasonable provisions for the use of exhibits at the deposition; shall specify who must and who may physically be present at the deposition; and shall provide for any other provisions appropriate under the circumstances. Unless otherwise stipulated to by the parties, the officer administering the oath shall be physically present at the place of the deposition and the additional costs of conducting the deposition by telephonic or other remote electronic means, such as telephone charges, shall be borne by the party requesting that the deposition be conducted by such means.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.