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

2619

2009-2010 Regular Sessions

I N  S E N A T E

February 25, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules and the judiciary law, in relation to jury selection

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

Section 1. Section 4106 of the civil practice law and rules, as amended by chapter 336 of the laws of 1972, is amended to read as follows:

S 4106. Alternate jurors. Unless the court, in its discretion, orders otherwise, one or two additional jurors, to be known as "alternate jurors", may be drawn upon the request of a party. Such jurors shall be drawn at the same time, from the same source, in the same manner, and have the same qualifications as the regular jurors, and be subject to the same examinations and challenges. They shall be seated with, take the oath with, and be treated in the same manner as the regular jurors, except that after final submission of the case, the court [shall] MAY, UPON CONSENT OF ALL PARTIES, discharge the alternate jurors. If, before the final submission of the case, a regular juror dies, or becomes ill, or for any other reason is unable to perform his OR HER duty, the court may order him OR HER to be discharged and draw the name of an alternate, who shall replace the discharged juror in the jury box, and be treated as if he OR SHE had been selected as one of the regular jurors.

S 2. The civil practice law and rules are amended by adding a new section 4107-a to read as follows:

S 4107-A. PROCEDURES FOR QUESTIONING, CHALLENGING AND SELECTING JURORS IN CIVIL CASES. JURY SELECTION IN CASES TRIABLE BY A JURY AS SET FORTH IN THIS ARTICLE SHALL BE CONDUCTED IN SUCH MANNER AS SHALL BE PROVIDED BY THE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS.

S 3. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (r) to read as follows:

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

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(R) (I) THE CHIEF ADMINISTRATOR OF THE COURTS SHALL DESIGNATE ONE OR MORE SUPERVISING JUDGES FOR VOIR DIRE FOR EACH JUDICIAL DISTRICT. SUCH A SUPERVISING JUDGE SHALL HAVE AUTHORITY, IN ACCORDANCE WITH THIS PARAGRAPH, TO REVIEW AND TO VACATE OR MODIFY AN ORDER OR DETERMINATION BY A JUSTICE, JUDGE OR JUDICIAL HEARING OFFICER IN RELATION TO THE CONDUCT OF JURY SELECTION IN A CIVIL ACTION ORIGINATING IN THE SUPREME COURT OR COUNTY COURT WHERE SUCH ORDER OR DETERMINATION CONSTITUTES A FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION FORTY-ONE HUNDRED SEVEN-A OF THE CIVIL PRACTICE LAW AND RULES OR THE RULES PROMULGATED THEREUNDER AFTER THE PROVISIONS OF SUCH SECTION OR SUCH RULES WERE BROUGHT TO THE ATTENTION OF SUCH JUDGE OR JUDICIAL HEARING OFFICER; PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL AFFECT THE RIGHTS OF ANY PARTY ON APPEAL.

(II) ANY PARTY AGGRIEVED BY AN ORDER OR DETERMINATION BY THE TRIAL COURT PERTAINING TO THE CONDUCT OF JURY SELECTION MAY REQUEST AN IMMEDIATE REVIEW UNDER THIS PARAGRAPH. A SUPERVISING JUDGE FOR VOIR DIRE SHALL CONSIDER SUCH REQUEST FOR REVIEW IN SUCH MANNER, INCLUDING TELEPHONE CONFERENCE, AS HE OR SHE MAY DETERMINE, EXCEPT THAT SUCH REVIEW SHALL NOT BE CONDUCTED EX PARTE. A RECORD, INCLUDING A RECORDING OF ANY TELEPHONE CONFERENCE, OF SUCH REVIEW SHALL BE MADE AT THE REQUEST OF ANY PARTY. ANY ORDER UNDER THIS PARAGRAPH SHALL BE REDUCED TO WRITING.

(III) NO JUDICIAL PROCEEDING SHALL BE DELAYED OR CONTINUED TO ALLOW FOR REVIEW HEREUNDER BY A SUPERVISING JUDGE FOR VOIR DIRE, PROVIDED, HOWEVER, THAT IF THE REQUEST FOR REVIEW PERTAINS TO AN ORDER OR DETERMINATION AS TO THE QUESTIONING OF AN INDIVIDUAL JUROR, THE VOIR DIRE SHALL BE SUSPENDED AND THE SUPERVISING JUDGE FOR VOIR DIRE SHALL RULE ON THE ORDER OR DETERMINATION BEFORE FURTHER QUESTIONING RESUMES AS TO THAT PARTICULAR JUROR.

(IV) THIS PARAGRAPH SHALL AUTHORIZE REVIEW BY A SUPERVISING JUDGE FOR VOIR DIRE ONLY OF A TRIAL COURT ORDER OR DETERMINATION RELATING TO JURY SELECTION AS SET FORTH IN THIS PARAGRAPH AND SHALL NOT AUTHORIZE SUCH REVIEW OF ANY OTHER ORDERS, DETERMINATIONS OR DECISIONS OF THE TRIAL COURT.

(V) A SPECIAL PROCEEDING IN THE APPROPRIATE APPELLATE DIVISION SHALL LIE PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO CHALLENGE A DELIBERATE FAILURE TO APPLY A METHOD OF SELECTION AUTHORIZED PURSUANT TO SECTION FORTY-ONE HUNDRED SEVEN-A OF THE CIVIL PRACTICE LAW AND RULES ONLY WHERE THE SUPERVISING JUDGE FOR VOIR DIRE FAILS TO REMEDY SUCH DELIBERATE FAILURE AFTER REVIEW PURSUANT TO THIS PARAGRAPH.

S 4. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law and apply to all actions filed on or after such effective date and to actions pending on such effective date provided no note of issue has yet been filed therein.