

6003

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. SCHNEIDERMAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed 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:
17 (a) Notwithstanding any other provision of law, the chief administra-
18 tor of the courts, with the approval of the administrative board of the

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

LBD14418-01-9

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

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

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

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

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

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

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

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

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

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

49 (VII) INTERNAL AFFAIRS OF BUSINESS ORGANIZATIONS;

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

52 (IX) ENVIRONMENTAL INSURANCE COVERAGE;

53 (X) COMMERCIAL INSURANCE COVERAGE (INCLUDING BUT NOT LIMITED TO DIREC-
54 TORS AND OFFICERS, ERRORS AND OMISSIONS, AND BUSINESS INTERRUPTION
55 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.

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

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

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

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

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

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

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

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