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

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 establishing guidelines for information subpoenas

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

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

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

(i) information subpoenas, served on an individual or entity other than the judgment debtor, may be served on an individual, corporation, partnership or sole proprietorship only if the judgment creditor or the judgment creditor's attorney has a reasonable belief that the party receiving the subpoena has in their possession information about the debtor that will assist the creditor in collecting his or her judgment. 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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contain a certification signed by the judgment creditor or his or her attorney stating the following: I HEREBY CERTIFY THAT THIS INFORMATION SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND THAT I HAVE A REASONABLE BELIEF THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR POSSESSION INFORMATION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING THE JUDGMENT. By signing the certification, the judgment creditor or attorney certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the individual or entity receiving the subpoena has relevant information about the debtor. ANY INFORMATION SUBPOENA SERVED PURSUANT TO THIS SUBPARAGRAPH SHALL BE ACCOMPANIED BY A VERIFICATION STATING THE GROUNDS BY WHICH THE JUDGMENT CREDITOR HAS FORMED THE REASONABLE BELIEF REQUIRED BY THIS SUBPARAGRAPH. FOR PURPOSES OF AN INFORMATION SUBPOENA SERVED ON A FEDERAL OR STATE CHARTERED CREDIT UNION, VERIFICATION SHALL INCLUDE A STATEMENT THAT THE JUDGMENT DEBTOR IS ELIGIBLE TO BECOME A MEMBER OF THE CREDIT UNION.

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

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

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

S 2. This act shall take effect immediately.