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

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I N A S S E M B L Y

June 19, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein) -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to the use of electronic recordings of testimony during court proceedings

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

Section 1. The judiciary law is amended by adding a new section 295-a to read as follows:

S 295-A. ELECTRONIC RECORDING OF COURT PROCEEDINGS. NOTWITHSTANDING ANY LAW, RULE OR REGULATION TO THE CONTRARY, THE CHIEF ADMINISTRATOR OF THE COURTS SHALL AUTHORIZE THE USE OF ELECTRONIC RECORDINGS OF COURT PROCEEDINGS IN LIEU OF USING AN OFFICIAL STENOGRAPHIC COURT REPORTER, AS PROVIDED IN SECTION TWO HUNDRED EIGHTEEN-A OF THIS CHAPTER. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL NOT AUTHORIZE THE USE OF ELECTRONIC RECORDING OF COURT PROCEEDINGS IN LIEU OF USING AN OFFICIAL STENOGRAPHIC COURT REPORTER IN (A) ANY PROCEEDING WHERE AN APPEAL, AS OF RIGHT, OR BY LEAVE OR PERMISSION, MAY BE TAKEN THEREFROM; (B) ANY PROCEEDING WHERE LIFE, LIBERTY OR OTHER FUNDAMENTAL RIGHT IS AT ISSUE; AND (C) ANY PROCEEDING WHERE CONFIDENTIALITY OR THE SECURITY OF THE PARTIES IS AT ISSUE. ANY ORAL OR WRITTEN AGREEMENT PURPORTING TO WAIVE THE USE OF AN OFFICIAL STENOGRAPHIC COURT REPORTER UNDER THIS SECTION IS HEREBY DECLARED TO BE VOID AS AGAINST PUBLIC POLICY.

S 2. The judiciary law is amended by adding a new section 218-a to read as follows:

S 218-A. ELECTRONIC RECORDINGS OF COURT PROCEEDINGS. 1. AUTHORIZATION. IN ANY COURT IN WHICH THE USE OF ELECTRONIC RECORDINGS OF PROCEEDINGS IS NOT PROHIBITED PURSUANT TO SECTION TWO HUNDRED NINETY-FIVE-A OF THIS CHAPTER, THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION SHALL APPLY.

2. DEFINITIONS. AS USED IN THIS SECTION:

(A) "ELECTRONIC RECORDING" MEANS INFORMATION EVIDENCING ANY TESTIMONY, EVENT OR ACTIVITY, PRODUCED OR STORED BY ELECTRONIC MEANS AND CAPABLE OF BEING REPRODUCED IN AUDIO OR VISUAL FORMS.

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

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(B) "OFFICIAL STENOGRAPHIC COURT REPORTER" MEANS AN OFFICIAL COURT REPORTER, WHOSE WORK PRODUCT OF THE TESTIMONY, EVIDENCE OR COURT PROCEEDINGS, OR PARTICULAR PART THEREOF, IS TRANSCRIBED AND CERTIFIED BY SUCH REPORTER TO BE TRUE AND CORRECT AND MAY BE RECEIVED IN EVIDENCE WITH THE SAME EFFECT AS IF SUCH STENOGRAPHER WERE PRESENT AND TESTIFYING TO THE FACTS SO CERTIFIED.

3. RULES AND REGULATIONS. THE CHIEF ADMINISTRATOR SHALL PROMULGATE RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION AFTER AFFORDING ALL INTERESTED PARTIES AN OPPORTUNITY TO REVIEW AND COMMENT THEREON. NO ELECTRONIC RECORDING OF ANY PROCEEDINGS MAY BE MADE, COPIED, VIEWED OR INSPECTED EXCEPT AS AUTHORIZED BY SUCH RULES.

(A) SUCH RULES AND REGULATIONS SHALL:

(I) BE CONSISTENT WITH ARTICLE NINE OF THIS CHAPTER AND IN ACCORDANCE WITH ANY COLLECTIVE BARGAINING AGREEMENTS, AS ADVANCING TECHNOLOGY IS INTEGRATED INTO COURT PROCEEDINGS;

(II) PRESERVE THE CONFIDENTIALITY, SECURITY AND PRIVACY OF THE PARTIES AND PROCEEDINGS, WHERE APPROPRIATE;

(III) ESTABLISH OVERSIGHT AND CONDUCT PERIODIC AUDITS OF ELECTRONIC RECORDING DEVICES; AND OF THE FILING, PRESERVATION, STORAGE AND ELECTRONIC SECURITY SYSTEMS; AND

(IV) ADOPT STANDARDS FOR FILING OF THE OATHS OF OFFICE AND CERTIFICATION OF OFFICIAL STENOGRAPHIC COURT REPORTERS.

(B) IF THE CHIEF ADMINISTRATOR AUTHORIZES CONTRACTS FOR ELECTRONIC RECORDING AND TRANSCRIPTION SERVICES, SUCH CONTRACTS SHALL ALSO CONTAIN PROVISIONS FOR:

(I) MAINTAINING A DEMONSTRABLE CHAIN OF CUSTODY OF ALL ELECTRONIC RECORDINGS AND TRANSCRIPTS OF COURT PROCEEDINGS;

(II) CONDUCTING AND REGULARLY UPDATING BACKGROUND CHECKS OF ALL EMPLOYEES HAVING ACCESS TO AND CONTACT WITH ELECTRONIC RECORDINGS AND TRANSCRIPTS OF COURT PROCEEDINGS;

(III) REQUIRING ACCURATE, TIMELY AND AFFORDABLE TRANSCRIPTION SERVICES FOR COURT PROCEEDINGS;

(IV) IMPOSE STANDARDS FOR EDUCATION, FILING OF OATHS AND CERTIFICATION OF TYPISTS COMPARABLE TO OFFICIAL STENOGRAPHIC COURT REPORTERS; AND

(V) PERIODIC AUDITING OF FILING, CATALOGING AND STORAGE SECURITY OF ELECTRONIC RECORDINGS, COPIES, AND TRANSCRIPTS.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.