

10795

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:

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

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

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

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

24 2. DEFINITIONS. AS USED IN THIS SECTION:

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

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

LBD16215-02-2

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

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

12 (A) SUCH RULES AND REGULATIONS SHALL:

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

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

18 (III) ESTABLISH OVERSIGHT AND CONDUCT PERIODIC AUDITS OF ELECTRONIC
19 RECORDING DEVICES; AND OF THE FILING, PRESERVATION, STORAGE AND ELEC-
20 TRONIC SECURITY SYSTEMS; AND

21 (IV) ADOPT STANDARDS FOR FILING OF THE OATHS OF OFFICE AND CERTIF-
22 ICATION OF OFFICIAL STENOGRAPHIC COURT REPORTERS.

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

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

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

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

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

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

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