

STATE OF NEW YORK

4376

2017-2018 Regular Sessions

IN SENATE

February 10, 2017

Introduced by Sens. KRUEGER, HAMILTON, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the New York city civil court act and the real property actions and proceedings law, in relation to stipulations in summary proceedings to recover possession of real property

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature hereby
2 finds and declares that litigants in cases in housing court parts, espe-
3 cially in the state's major metropolitan areas, are often self-repre-
4 sented. Under these circumstances, and especially because the stakes
5 for the self-represented litigant in such cases can be so high, e.g.,
6 eviction from one's home, it is vital to the administration of justice
7 that the judges in such parts take all necessary and appropriate steps
8 to assure that self-represented litigants fully understand the
9 proceedings in which they are involved, any claims or defenses they may
10 have and the available options in light of those claims or defenses, and
11 the potential consequences of any agreements they may be asked to make
12 in the course of those proceedings. Accordingly, it is the intent of
13 this act that no agreement between the parties to a proceeding in a
14 housing court part wherein one or more of such parties are self-repre-
15 sented may be approved by the court unless the judge presiding therein
16 ascertains that the claims or defenses of each self-represented party
17 are adequately addressed in the stipulation and that each self-repre-
18 sented party understands the nature and consequences of such agreement;
19 and the judge memorializes such inquiry on the record of the proceeding.
20 In declaring this intent, the legislature further reminds all authori-
21 ties responsible for designating the judges who preside in housing
22 courts parts of the importance of selecting or reappointing judges who

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

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1 are best equipped, by training, experience and disposition, to preside
2 over cases where parties frequently are self-represented.

3 § 2. Subdivisions (f) and (i) of section 110 of the New York city
4 civil court act, subdivision (f) as amended by chapter 64 of the laws of
5 2007 and subdivision (i) as amended by chapter 310 of the laws of 1978,
6 are amended to read as follows:

7 (f) The housing judges shall be appointed by the administrative judge
8 from a list of persons selected annually as qualified by training,
9 interest, experience, judicial temperament, ability to handle a caseload
10 involving self-represented litigants and knowledge of federal, state and
11 local housing laws and programs by the advisory council for the housing
12 part. The list of persons who have been approved by such advisory coun-
13 cil, whether or not appointed to such judicial position, shall be deemed
14 public information and be published in the city record immediately after
15 such list is submitted to the administrative judge. The annual salary
16 of a housing judge shall be one hundred fifteen thousand four hundred
17 dollars.

18 (i) Housing judges shall have been admitted to the bar of the state
19 for at least five years, two years of which shall have been in active
20 practice. Each housing judge shall serve full-time for five years.
21 Reappointment shall be at the discretion of the administrative judge and
22 on the basis of the criteria set forth for selection by the advisory
23 council in subdivision (f) of this section, performance, competency and
24 results achieved during the preceding term, and the judge's allocution
25 of stipulations to self-represented litigants and the judge's compliance
26 with section seven hundred forty-six of the real property actions and
27 proceedings law.

28 § 3. Section 746 of the real property actions and proceedings law, as
29 added by chapter 281 of the laws of 2009, is amended to read as follows:

30 § 746. Stipulations. 1. In any proceeding under this article, if a
31 stipulation is made, on the occasion of a court appearance in the
32 proceeding, setting forth an agreement between the parties, other than a
33 stipulation solely to adjourn or stay the proceeding, and either the
34 petitioner or the respondent is not represented by counsel, the court
35 shall fully describe the terms of the stipulation to that party on the
36 record.

37 2. No stipulation required to be on the record by subdivision one of
38 this section may be approved by the court unless the court first
39 conducts an allocution on the record that shall, at a minimum, find the
40 following:

41 (a) the identity of the parties and whether all necessary parties have
42 been named in the proceeding;

43 (b) the authority of the signatory to the stipulation if the named
44 party is not present; and

45 (c) shall further find:

46 (i) that the unrepresented party understands that he or she may try
47 the case if he or she does not agree with the proposed stipulation or if
48 an acceptable stipulation cannot be negotiated;

49 (ii) where the other party is represented, whether the party's attor-
50 ney inappropriately gave legal advice to the unrepresented litigant or
51 whether the unrepresented litigant is agreeing to the proposed stipu-
52 lation as a result of undue duress;

53 (iii) whether the unrepresented respondent agrees with or contests any
54 allegation in the petition and predicate notices;

55 (iv) that the unrepresented party is aware of and understands claims
56 or defenses he or she may have in the proceeding and is aware of the

1 available options in light of those claims or defenses, especially where
2 the stipulation provides for a surrender of the dwelling unit or the
3 conversion of a nonpayment proceeding into a holdover proceeding;

4 (v) that the unrepresented litigant's claims or defenses are adequate-
5 ly addressed in the stipulation;

6 (vi) that the unrepresented party understands and agrees to the terms
7 of the stipulation;

8 (vii) that the unrepresented party understands the effect of non-com-
9 pliance with the terms of the stipulation by either side and what the
10 deadlines and procedures are for addressing such non-compliance, includ-
11 ing how to restore the case to the court calendar to obtain relief under
12 or from the stipulation;

13 (viii) in all non-payment cases, including where the unrepresented
14 party indicates that he or she intends to apply for public assistance
15 benefits or to a charity to pay rent that is sought in the proceeding
16 and that the court has determined to be owing to the petitioner, that an
17 appropriate rent breakdown is included in the stipulation; and

18 (ix) that the unrepresented party understands the implications of a
19 judgement against him or her and the legal requirement that the peti-
20 tioner provide a satisfaction of judgement upon payment.

21 3. The court may use a court attorney to conference a case to deter-
22 mine the unrepresented party's claims or defenses and his or her under-
23 standing of all available options in light of those claims or defenses,
24 or any of the other elements of the allocution required by this section.
25 However, such conference may not substitute for an allocution by the
26 court and, where it is used, the results shall be reported to the court,
27 which shall note on the record that such conference occurred.

28 4. Notwithstanding the foregoing, where the court, in its discretion,
29 determines that, in the interests of justice, inclusion in the allo-
30 cation required by subdivision two of this section of one or more find-
31 ings described in paragraph (c) of such subdivision is or are not neces-
32 sary given the history of the case, prior appearances or other factors,
33 excluding a court attorney conference provided for in subdivision three
34 above, such finding or findings may be omitted and the reason for such
35 omission shall be set forth on the record.

36 § 4. This act shall take effect on the ninetieth day after it shall
37 have become a law and shall apply to all proceedings commenced on or
38 after such effective date.