STATE OF NEW YORK

1511

2019-2020 Regular Sessions

IN ASSEMBLY

January 15, 2019

Introduced by M. of A. EPSTEIN -- read once and referred 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:

Section 1. Legislative findings and intent. The legislature hereby finds and declares that litigants in cases in housing court parts, especially in the state's major metropolitan areas, are often self-represented. Under these circumstances, and especially because the stakes for the self-represented litigant in such cases can be so high, e.g., eviction from one's home, it is vital to the administration of justice that the judges in such parts take all necessary and appropriate steps to assure that self-represented litigants fully understand the proceedings in which they are involved, any claims or defenses they may have and the available options in light of those claims or defenses, and the potential consequences of any agreements they may be asked to make in the course of those proceedings. Accordingly, it is the intent of this act that no agreement between the parties to a proceeding in a housing court part wherein one or more of such parties are self-represented may be approved by the court unless the judge presiding therein ascertains that the claims or defenses of each self-represented party are adequately addressed in the stipulation and that each self-represented party understands the nature and consequences of such agreement; and the judge memorializes such inquiry on the record of the proceeding. In declaring this intent, the legislature further reminds all authorities responsible for designating the judges who preside in housing courts parts of the importance of selecting or reappointing judges who are best equipped, by training, experience and disposition, to preside over cases where parties frequently are self-represented.

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

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

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

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

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

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

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

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

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

(c) shall further find:

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

(ii) where the other party is represented, whether the party's attorney inappropriately gave legal advice to the unrepresented litigant or whether the unrepresented litigant is agreeing to the proposed stipulation as a result of undue duress;

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

(iv) that the unrepresented party is aware of and understands claims or defenses he or she may have in the proceeding and is aware of the available options in light of those claims or defenses, especially where

the stipulation provides for a surrender of the dwelling unit or the conversion of a nonpayment proceeding into a holdover proceeding;

(v) that the unrepresented litigant's claims or defenses are adequately addressed in the stipulation;

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

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

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

(ix) that the unrepresented party understands the implications of a judgement against him or her and the legal requirement that the petitioner provide a satisfaction of judgement upon payment.

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

4. Notwithstanding the foregoing, where the court, in its discretion, determines that, in the interests of justice, inclusion in the allocution required by subdivision two of this section of one or more findings described in paragraph (c) of such subdivision is or are not necessary given the history of the case, prior appearances or other factors, excluding a court attorney conference provided for in subdivision three above, such finding or findings may be omitted and the reason for such omission shall be set forth on the record.

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