STATE OF NEW YORK

7343

IN SENATE

January 21, 2020

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing provisions for appeals by a non-party to an intermediate appellate court

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

Section 1. The criminal procedure law is amended by adding a new section 450.25 to read as follows:

§ 450.25 Appeal by non-party to intermediate appellate court; in what cases authorized.

An appeal directly to the intermediate appellate court may be taken as of right by a non-party from the following orders of a criminal court:

1. An order of a criminal court denying a non-party's motion to quash a subpoena duces tecum on the grounds that the movant is protected from compelled production by claim of privilege, immunity from disclosure, or any other constitutional, common law, or statutory privilege, including those set forth under article forty-five or subdivision (c) of section thirty-one hundred one of the civil practice law and rules and section seventy-nine-h of the civil rights law.

2. An order denying a motion to quash a subpoena ad testificandum on the grounds that the movant is protected from compelled testimony by claim of privilege, immunity from disclosure, or any other constitutional, common law, or statutory privilege, including those set forth under article forty-five or subdivision (c) of section thirty-one hundred one of the civil practice law and rules and section seventy-nine-h of the civil rights law.

3. An appeal taken pursuant to subdivision one or two of this section shall be expeditiously filed, heard and determined in accordance with the rules of the appellate division of the department in which such intermediate appellate court is located. Such appeal may be taken only upon reasonable notice to the parties to the action or proceeding who shall have an opportunity to be heard thereon.

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

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4. The appellate division of each judicial department shall adopt rules for providing notice to the parties pursuant to subdivisions one and two of this section, and for the expeditious filing, briefing, hearing, and determination of appeals under this section.

5. This section shall not apply where the subpoena that is the subject of the motion to quash relates to a grand jury proceeding.

§ 2. The opening paragraph of section 450.60 of the criminal procedure law is amended to read as follows:

The particular intermediate appellate courts to which appeals authorized by sections 450.10 [~~and~~], 450.20 **and 450.25** must be taken are as follows:

§ 3. Section 460.10 of the criminal procedure law is amended by adding a new subdivision 4-a to read as follows:

4-a. An appeal by a non-party to an intermediate appellate court by right, pursuant to section 450.25 of this title, shall be taken in accordance with the rules of the appellate division of the department in which such intermediate appellate court is located.

§ 4. The section heading of section 460.50 of the criminal procedure law is amended and a new subdivision 7 is added to read as follows:

Stay of judgment **or proceedings** pending appeal to intermediate appellate court.

7. (a) Where a non-party to a criminal action or proceeding has appealed an order of a criminal court, pursuant to section 450.25 of this title, such non-party may apply to the criminal court that issued such order for an order staying such action or proceeding pending the determination of such appeal.

(b) If an application brought pursuant to paragraph (a) of this subdivision is denied, the non-party may apply to the intermediate appellate court where the appeal is then pending for an order staying such action or proceeding pending the determination of such appeal.

(c) An application brought pursuant to paragraph (a) or (b) of this subdivision, shall be brought upon reasonable notice to the parties to such action or proceeding and such parties shall be accorded adequate opportunity to appear and be heard in support thereof or in opposition thereto. Such application shall be made in a manner determined by the rules of the appellate division of the department in which such intermediate appellate court is located.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law.