

BILL TEXT:

STATE OF NEW YORK

8178--B

Cal. No. 805

2005-2006 Regular Sessions

IN ASSEMBLY

May 10, 2005

Introduced by M. of A. A. COHEN, WEINSTEIN -- read once and referred to the Committee on Judiciary -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to the filing of civil papers

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

1 Section 1. Subdivision (e) of section 105 of the civil practice law
2 and rules is amended to read as follows:

3 (e) Clerk. The word "clerk," as used in any provision respecting an
4 action or any proceedings therein, means the clerk of the court in which
5 the action is triable. In supreme and county court, the word "clerk"
6 shall mean the clerk of the county.

7 § 2. Section 304 of the civil practice law and rules, as amended by
8 section 1 of chapter 473 of the laws of 2001, is amended to read as
9 follows:

10 § 304. Method of commencing action or special proceeding. (a) An
11 action is commenced by filing a summons and complaint or summons with
12 notice in accordance with rule twenty-one hundred two of this chapter. A
13 special proceeding is commenced by filing a petition in accordance with
14 rule twenty-one hundred two of this chapter. Where a court finds that
15 circumstances prevent immediate filing, the signing of an order requir-
16 ing the subsequent filing at a specific time and date not later than
17 five days thereafter shall commence the action. [~~For purposes of this~~
18 ~~section, and for purposes of section two hundred three of this chapter~~
19 ~~and section three hundred six-a of this article, filing shall mean the~~
20 ~~delivery of the summons with notice, summons and complaint or petition~~
21 ~~to the clerk of the court in the county in which the action or special~~

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

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~~1 proceeding is brought or any other person designated by the clerk of the
2 court for that purpose together with any fee required as specified in
3 rule twenty one hundred two of this chapter for filing.]~~

4 (b) Notwithstanding any other provision of law, such [~~delivery~~] filing
5 may be accomplished by facsimile transmission or electronic means, as
6 defined in subdivision (f) of rule twenty-one hundred three of this
7 chapter, where and in the manner authorized by the chief administrator
8 of the courts by rule.

9 (c) For purposes of this section, and for purposes of section two
10 hundred three of this chapter and section three hundred six-a of this
11 article, filing shall mean the delivery of the summons with notice,
12 summons and complaint or petition to the clerk of the court in the coun-
13 ty in which the action or special proceeding is brought or any other
14 person designated by the clerk of the court for that purpose. At the
15 time of filing, the filed papers shall be date stamped by the clerk of
16 the court who shall file them and maintain a record of the date of the
17 filing and who shall return forthwith a date stamped copy, together with
18 an index number, to the filing party, except where filing is by elec-
19 tronic means. Such filing shall not be accepted unless any fee required
20 as specified in section eight thousand eighteen of this chapter has been
21 paid. Where filing is by electronic means, any fee required shall be
22 paid in the time and manner authorized by the chief administrator of the
23 court by rule.

24 (d) Where filing is by facsimile transmission, the clerk of the court
25 need only return a date stamped copy of the first page of the papers
26 initiating the lawsuit, together with the index number.

27 (e) Where filing is by electronic means, the clerk shall, in accord-
28 ance with rules promulgated by the chief administrator, forthwith notify
29 the filing party of the index number and the date and time of filing.

30 (f) A confirmation record produced by the filing party's facsimile
31 machine or computer and an affidavit of filing by the filing party,
32 shall be prima facie evidence that the filing party transmitted docu-
33 ments consistent with the date, time and place appearing on the confir-
34 mation record.

35 § 3. Section 306-a of the civil practice law and rules, as added by
36 chapter 216 of the laws of 1992 and subdivision (a) as amended by chap-
37 ter 473 of the laws of 2001, is amended to read as follows:

38 § 306-a. Index number in an action or proceeding commenced in supreme
39 or county court. (a) Upon filing the summons and complaint, summons
40 with notice or petition in an action or proceeding commenced in supreme
41 or county court with the clerk of the county, an index number shall be
42 assigned and the fee required by subdivision (a) of section eight thou-
43 sand eighteen of this chapter shall be paid. Upon the filing of a
44 summons and complaint against a person not already a party, as permitted
45 under section one thousand seven or rule one thousand eleven of this
46 chapter, the fee required by subdivision (a) of section eight thousand
47 eighteen of this chapter shall be paid, but a separate index number
48 shall not be assigned.

49 (b) If a person other than the plaintiff or third-party plaintiff who
50 served the summons or third-party summons obtains the index number and
51 pays the fee therefor, the clerk shall issue an order directing the
52 plaintiff or the third-party plaintiff to pay such person the amount of
53 the fee paid. If such fee is not paid within thirty days of service of
54 the order with notice of entry, the person who paid the fee, in addition
55 to any other remedies available at law, may apply to the clerk for an
56 order dismissing the action without prejudice.

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1 § 4. Rule 2102 of the civil practice law and rules is amended to read
2 as follows:

3 Rule 2102. Filing of papers. (a) Except where otherwise prescribed by
4 law or order of court, papers required to be filed shall be filed with
5 the clerk of the court in which the action is triable. In **an action or**
6 **proceeding in supreme or county court and in** a proceeding not brought in
7 a court, papers required to be filed shall be filed with the clerk of
8 the county in which the proceeding is brought.

9 (b) A paper filed in accordance with the rules of the chief adminis-
10 trator or any local rule or practice established by the court shall be
11 deemed filed. Where such rules or practice allow for the filing of a
12 paper other than at the office of the clerk of the court, such paper
13 shall be transmitted to the clerk of the court.

14 (c) A clerk shall not refuse to accept for filing any paper presented
15 for that purpose except where specifically directed to do so by statute
16 or rules promulgated by the chief administrator of the courts, or order
17 of the court.

18 § 5. Notwithstanding any inconsistent provision of this act, nothing
19 contained herein shall be deemed to prevent any court of this state from
20 making a determination as to the legal sufficiency of any legal filings
21 under the applicable sections of the civil practice law and rules.

22 § 6. This act shall take effect on the first of January next succeed-
23 ing the date on which it shall have become a law and shall apply to any
24 actions or proceedings commenced on or after such effective date,
25 provided, however, that the amendments to section 304 of the civil prac-
26 tice law and rules made by section two of this act shall not affect the
27 repeal of such section and shall be deemed to be repealed therewith.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A8178B**SPONSOR:** Cohen A (MS)**TITLE OF BILL:** An act to amend the civil practice law and rules, in
relation to the filing of civil papers**PURPOSE:**

This legislation seeks to establish and clarify rules relating to the filing of civil papers. This bill is being introduced in response to Mendon Ponds Neighborhood Association v. Dehm, 98 NY 2d 745, a recent Court of Appeals decision which discussed the interplay between the new commencement by filing system and court practice throughout the state. In Mendon Ponds the Court held that an Article 78 proceeding was improperly filed for the purposes of commencing the proceeding when it was not filed with the County Clerk of Monroe county, but was instead filed with the Clerk of the Supreme Court in Monroe County. Since the petition was not filed with the County Clerk, the Court found the proceeding had not been properly commenced and jurisdictionally defective.

SUMMARY OF PROVISIONS:

RETRIEVE BILL

Section 1 of the bill amends the definitions section of the CPLR 105 (e) to clearly spell out that in Supreme and County court, the clerk of the court is the clerk of the county.

§ 2 of the bill amends CPLR 304 to make reference to CPLR 2102, which relates to the filing of papers in a civil proceeding and requires the payment of any required fee.

§ 3 of the bill amends CPLR 306-a to clarify that in any action or proceeding commenced in supreme or county court the papers commencing the action or proceeding are to be filed with the clerk of the county, who is the Clerk of the Supreme and County Courts in each county.

§ 4 of the bill amends CPLR 2102, which relates to the filing of papers in a civil proceeding. It reinforces the need to file with the county clerk. New provisions are added to ensure that papers which have been filed in accordance with rules promulgated by the court administration or the filed papers pursuant to such rule or court order or practice to the official clerk of the court. Court clerks are prohibited from refusing to accept for filing papers unless a statute, rule of the chief administrator or order of the court prohibits the acceptance of such papers.

EXISTING LAW AND JUSTIFICATION:

Section 6(e) of Article VI of the New York State Constitution, and section 525 of the County Law both provide that the County Clerk is the ex officio Clerk of the Supreme and County Courts in each county. However, CPLR 304, 305, 1007 and 2102 as well as numerous other sections of the CPLR are somewhat ambiguous as to where papers should be filed. Mendon Ponds makes it clear the failure to file in the appropriate place will result in a dismissal. This bill will clear up the ambiguities of the present statute and not create a trap for the unwary.

LEGISLATIVE HISTORY:

2004, S.6259/A.10403, Veto #24. Similar to S.4957 of 2003.

FISCAL IMPLICATIONS:

None.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

January 1, next succeeding the date it shall become a law and applies to all actions and proceedings commenced on or after such effective date, subject to the existing repealer of amendments to CPLR 304.

VETO MESSAGE:

VETO MESSAGE - No. 51

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 8178-B, entitled:

"AN ACT to amend the civil practice law and rules, in relation to the filing of civil papers"

NOT APPROVED

This bill would amend the Civil Practice Law and Rules (CPLR) in relation to the commencement of civil actions and proceedings in the Supreme and County Courts. Specifically this bill would: (i) define "clerk" to mean "clerk of the county" as it pertains to the filing of actions; (ii) require the commencement of actions to be in accordance with CPLR Section 2102, which would be amended to require commencement of actions and proceedings to be filed with the "clerk of the county"; (iii) prohibit the filing of commencement papers unless accompanied by the appropriate fee; (iv) clarify that an index number is assigned upon filing with the "clerk of the county"; (v) provide that any paper filed in accordance with a local rule of court shall be deemed appropriately filed; and (vi) prohibit any "clerk" from refusing to accept any paper for filing unless specifically directed to do so by statute or rule of court. The bill would also provide that nothing in the bill be deemed to prevent a court from determining the legal sufficiency of any filing pursuant to the CPLR. The bill would take effect January 1, 2006.

Under current law, litigants in Supreme and County Courts must commence actions and proceedings by filing with the County Clerk. Pursuant to the State Constitution and County Law, County Clerks are the "clerks of the Supreme and County Courts" and actions must therefore be commenced by filing in the County Clerk's office. According to the sponsors' memorandum, the purpose of this bill is to address the Court of Appeals' decision in Mendon Ponds Neighborhood Association v. Dehm, 98

N.Y.2d 745 (2002), which held that a claim improperly filed with the Court Clerk must be dismissed. Evidently, the County Clerk in Mendon had

failed to guide the petitioner with respect to the correct place of filing.

This bill is similar to a bill that I disapproved last year on the grounds that the bill might have had unintended consequences and deprived the Judiciary of appropriate authority to determine whether a filing is legally sufficient. See: Veto No. 24 of 2004. While this

bill has been changed to ensure that the Judiciary maintains its authority to determine whether filings are legally sufficient, I remain concerned that this bill may have unintended consequences. It appears that the numerous amendments and cross references would actually result in a more confusing statutory scheme than exists under current law. While the bill has the laudable goal of attempting to clarify filing of claims, I am concerned that it actually could result in additional confusion. Moreover, the Unified Court System promulgated a simple rule to address the Mendon decision by requiring each County Clerk to "post

prominently in the public areas of his or her office" a notice that filing of commencement papers is to be made with the County Clerk only. Since the Unified Court System has administratively addressed the Mendon

decision, and since the bill may have an unanticipated impact, I am again constrained to disapprove this bill.

The bill is disapproved.

(signed) GEORGE E. PATAKI

