

## BILL TEXT:

## STATE OF NEW YORK

4343--B

Cal. No. 898

2005-2006 Regular Sessions

## IN SENATE

April 13, 2005

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in 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 SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S4343B**SPONSOR:** VOLKER**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 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.