

Legislation Report

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 10

March 8, 2001

S. 135

By: Senator Volker
Senate Committee: Codes
Effective Date: 1st day of January next
succeeding the date on
which it shall have become
a law

AN ACT to amend the civil practice law and rule, in relation to conducting depositions by telephone or other remote electronic means

LAW AND SECTIONS REFERRED TO: CPLR 3113

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES (#4)

THIS BILL IS APPROVED

This bill is intended to facilitate the use of telephones and other electronic means of communication in taking depositions in civil actions. The bill provides that, upon stipulation of the parties or order of the court, a party may take a deposition by telephone or other remote electronic means and that a party may participate electronically. However, the bill also provides that a party cannot be compelled to depose a person in a place other than one provided by existing CPLR 3110 and a witness cannot compel his or her own deposition to be taken at a location other than one provided by CPLR 3110. Any order or stipulation implementing a remote deposition is required to make provisions for keeping an accurate record and, as necessary, for the use of exhibits; it must also specify who must and who may be physically present and any other matter appropriate under the circumstances. Unless stipulated otherwise, the bill requires that the oath be administered by a person present at the place of deposition and that additional costs attributable to the use of telephonic means be borne by the party requesting telephonic means.

The use of telephonic or other remote electronic means (such as video conferencing) to simplify the logistical aspects of depositions is a laudable goal which the committee supports. This bill is a significant improvement over S 7664 and A 11001 introduced in the 1998 session of the legislature.

It should be observed that everything the bill would permit to be done by order can be done by stipulation under present law. Stating this in the text of the CPLR will still serve the useful purpose of reminding practitioners of the availability of alternatives to the procedures mandated by the CPLR so long as all concerned agree. In the absence of a stipulation, the court should not be able to change the location where the person being deposed must appear. However, giving the court the power to authorize the "electronic attendance" of parties not being deposed (and their counsel) can make a significant reduction in cost in time and expense of attending and participating in depositions.

For the forgoing reasons, this bill is **APPROVED**.

Person who prepared the report: James N. Blair, Esq.

Chair of the Committee: Steven M. Critelli, Esq.