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Report
of
The Chief Administrative Judge of the Courts

For the Calendar Year
January 1, 1998 - December 31, 1998

Court of Appeals
Judith S. Kaye, Chief Judge

Vito J. Titone
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George Bundy Smith

Howard A. Levine
Carmen Beauchamp Ciparick
Richard C. Wesley

Chief Administrative Judge of the Courts
Jonathan Lippman

Administrative Board of the Courts
Judith S. Kaye, Chair

Anthony V. Cardona
Guy J. Mangano

M. Dolores Denman
Alfred D. Lerner

EBi

Chapter 4

Legislation and Rules Revision

Legislation

The Office of Counsel is the principal representative of the Unified Court System in the legislative process. In this role, it is responsible for developing the Judiciary's legislative program and for providing the legislative and executive branches with analyses and recommendations concerning legislative measures that may have an impact on the courts and their administrative operations. It also serves a liaison function with bar association committees, judicial associations and other groups, public and private, with respect to changes in court-related statutory law.

Counsel's Office staffs the Chief Administrative Judge's advisory committees on civil practice, criminal law and procedure, family law, estates and trusts, and local courts (established in 1997). These committees formulate legislative proposals in their respective areas of concern and expertise for submission to the Chief Administrative Judge. When approved by the Chief Administrative Judge, they are transmitted to the Legislature, in bill form, for sponsors and legislative consideration.

Each advisory committee also analyzes other legislative proposals submitted for review during the legislative session. Recommendations are submitted to the Chief Administrative Judge, who, through his Counsel, communicates with the Legislature and the Executive Branch on such matters in the form of legislative memoranda and letters to Governor's Counsel.

Counsel's Office is also responsible for drafting legislation to implement recommendations made by the Chief Judge in her State of the Judiciary message, as well as bills required by the Unified Court System, including budget requests, adjustments in judicial compensation, and implementations of collective bargaining

agreements negotiated with court employee unions pursuant to the Taylor Law. In addition, Counsel's Office analyzes other legislative measures that have potential impact on the administrative operation of the courts and makes recommendations to the Legislature and the Executive Branch on such matters.

In the discharge of its legislation-related duties, Counsel's Office consults frequently with legislators, the professional staff of legislative committees, and the Governor's Counsel for the purposes of generating support for the Judiciary's legislative program and providing technical assistance in the development of court-related proposals initiated by the Executive and Legislative Branches.

During the 1998 legislative session, Counsel's Office, with the assistance of the Chief Administrative Judge's advisory committees, prepared and submitted 44 new measures for legislative consideration. These were in addition to 97 measures it submitted to the Legislature in its 1997 session that did not achieve passage and were carried over into the 1998 session. Of this total of 141 measures, 18 ultimately were enacted into law. Also during the 1998 session, Counsel's Office furnished Counsel to the Governor and the Legislature with formal written analyses and recommendations on 43 measures.

In December of every year, each of the Advisory Committees submits a report to the Chief Administrative Judge, setting forth its legislative proposals for the coming year. Copies of the 1998 reports may be obtained from Counsel's Office at 25 Beaver Street, New York, New York, 10004. Set forth below is a synopsis of the work of the Committees during 1998 that was incorporated into the Judiciary's legislative program. It is followed by a recitation of the laws relating to

the court system enacted in 1998; the court-related measures introduced as part of the Judiciary's legislative program but not enacted into law; and a listing of the amendments to the Rules of the Chief Judge and the Chief Administrative Judge (22NYCRR) adopted in 1998.

The Work of the Advisory Committees

Advisory Committee on Civil Practice

The Committee annually recommends to the Chief Administrative Judge proposals concerning the Civil Practice Law and Rules ("CPLR"). During 1998, the Committee continued to focus on the use of technology and evaluate its efficacy to facilitate the litigation process. To that end, it proposed that pilot programs be conducted at several locations throughout the State to permit the commencement of a lawsuit by the filing of facsimiles of the legal papers with the County Clerk, or by other means of electronic transmission, such as e-mail.

During the 1998 legislative session, the Committee saw the adoption of the following measure that it had proposed:

- CPLR 311(b) (Personal service upon a corporation or governmental subdivision) was amended to eliminate the need for finding, as a precondition to judicially-ordered service upon a corporation, that filing proof of service would be impracticable, thereby harmonizing the statute with 1997 legislation eliminating the need for proof of service to be filed. (L. 1998, c. 202)

The following are among the Committee's more significant legislative measures proposed in calendar year 1998 for the 1999 legislative session:

(A) Broadened Discovery

This measure would amend the CPLR to simplify the discovery rules for the production of non-party business records and their introduction into evidence. These changes would eliminate the present requirement that, in the absence of a non-party deposition, a party must obtain a court order before being permitted to seek discovery

and inspection of non-party documents or things. In addition, the amendment would eliminate the need for a non-party to appear with business records, instead allowing the production of the documents at the non-party's place of business, or the delivery of certified copies to the party. The amendment also would permit a non-party to make a written objection to a discovery demand, instead of the current requirement of making a motion to quash the request.

(B) Conduct of Depositions

This measure would amend Rules 3113 (Conduct of the examination) and 3115 (Objections to qualifications of person taking deposition) of the CPLR to impose sufficient safeguards against a variety of abusive practices that may be engaged in by parties attempting to obstruct the truth-finding process during depositions. The amendments would provide that every objection be stated succinctly and so as not to suggest an answer to the deponent, and that, upon request by the attorney conducting the deposition, an objection be accompanied by a clear explanation of the alleged defect. Deponents would be required to answer all questions except in certain limited circumstances; and no interruptions of the deposition for an attorney-deponent communication would be permitted unless all parties consent, or where, after entering the reason on the record, the communication involves a claim of privilege, right of confidentiality, or a limitation in a court order.

(C) Neglect to Proceed

This measure would amend CPLR 3216 (Want of prosecution – for cases prior to the filing of the note of issue) and CPLR 3404 (Dismissal of abandoned cases – for cases following the filing of the note of issue), to permit civil courts to dismiss inactive or abandoned cases on their calendars, thereby enhancing effective case management. The proposed changes would make available to the civil courts a greater number of options, including striking the offending parties' pleadings and dismissing the action.

(D) Simplification of the calculation of interest on judgments against Municipalities, Public Corporations and the State of New York

This measure would amend Section 3-a of the General Municipal Law, Section 157(5) of the Public Housing Law, Section 16 of the State Finance Law, Section 2501 of the Unconsolidated

Senate 5430. This measure would amend the CPLR to authorize use of Judicial Hearing Officers to hear and determine any issue in an action so long as no parties' constitutional rights (e.g., right to jury trial) would thereby be compromised.

Senate 3454/Assembly 7041. This measure would amend section 110(g) of the New York City Civil Court Act to extend the terms of office of the members of the Advisory Council for the Housing Part by one year, to a term of 4 years; and provide for the staggering of the expiration dates of the terms of the members of the Advisory Council.

Senate 5162-B. This measure would amend section 2-1.11(c) of the Estates, Powers and Trusts Law, which regulates the renunciation of property interests created under a will or trust for the benefit of infants, incompetents, conservatees and deceased persons, and section 5-1502G(3) of the General Obligations Law, which regulates the language and effect of the New York short form power of attorney with respect to an agent entering into "estate transactions," to make the sections consistent.

Senate 4264. This measure would amend the Judiciary Law to provide that formal complaints and hearings of the State Commission on Judicial Conduct shall no longer be confidential and that transcripts of such hearings shall be available to the public.

Assembly 7039. This measure would repeal provisions of section 516 of the Family Court Act requiring court approval for an agreement between mother and putative father for support and education of an out-of-wedlock child.

Senate 3455. This measure would amend section 249 of the Family Court Act to mandate the assignment of a law guardian for the child in every foster care review proceeding brought pursuant to sections 358-a and 392 of the Social Services Law.

Senate 4490/Assembly 7839. This measure would amend section 1204 of the CPLR to provide compensation from state or county funds for guardians *ad litem* appointed for children and adults in civil proceedings.

Senate 3424/Assembly 6327. This measure would amend provisions of the Family Court Act to add flexibility to existing dispositional alternatives available in PINS proceedings.

Senate 3440. This measure would amend section 221-a of the Executive Law to make the knowing or willful authorized disclosure of information stored in the statewide computer system of orders of protection and warrants a Class A misdemeanor, and authorize the imposition of a civil penalty, not to exceed \$5,000 for any willful, knowing or grossly negligent disclosure.

Senate 5112/Assembly 7636. This measure would amend section 315.2 of the Family Court Act to provide that undue delay in the filing of a juvenile delinquency petition is a permissible ground for a motion to dismiss in furtherance of justice.

Senate 3757. This measure would amend section 235 of the Domestic Relations Law to allow access by prosecutors to confidential records in matrimonial actions for purposes of pending criminal investigations.

Senate 3618. This measure would amend sections 1012, 1046 and 1051 of the Family Court Act and section 384-b of the Social Services Law to authorize Family Court, at the fact-finding stage of a child abuse proceeding, to render additional findings of either severe or repeated child abuse, if there is "clear and convincing" evidence in support thereof; render a criminal conviction involving homicide or another violent felony offense admissible in termination of parental rights proceedings; and delete the anomalous requirement of competent evidence in dispositional hearings in termination of parental rights proceedings based upon severe or repeated child abuse.

Senate 3612. This measure would amend section 221-a of the Executive Law and sections 1029 and 1056 of the Family Court Act to provide for inclusion in the statewide registry of orders of protection and family offense warrants, orders and warrants issued in abuse and neglect proceedings.

Senate 3601/Assembly 7842. This measure would amend section 308 of the CPLR to add a new undesignated paragraph at its end to provide