



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N. Y. 10007

September 2, 2008

A.11715 – by Rules Committee

AN ACT to amend the civil practice law and rules and the  
judiciary law, in relation to jury selection

DISAPPROVAL RECOMMENDED

Hon. David Paterson  
Governor of the State of New York  
Executive Chamber  
Albany, New York 12224

Dear Governor Paterson:

The above-referenced bill is now before you for executive action.

The bill would amend Civil Practice Law and Rules (CPLR) Section 4106, add a new Section 4107-a to the CPLR, and amend Section 212(2) of the judiciary law to provide, among other things, that: a) jury selection shall be conducted in the manner provided by the rules of the Chief of the Administrator of the Courts; b) the Chief Administrator of the Courts shall designate in each judicial district one or more supervising judges, who shall have the authority to review rulings with regard to jury selection and determine whether such rulings violate the Chief Administrator's rules; c) any party aggrieved by a determination or order of a judge or judicial hearing officer with regard to jury selection may request immediate review by a supervising judge, who may then vacate or modify the ruling; d) voir dire may be suspended with regard to a particular juror, pending review by the Supervising Judge of a ruling with regard to questioning of that juror; and e) an Article 78 proceeding may be brought to challenge a deliberate failure to apply a method of jury selection authorized pursuant to Section 4107-a of the CPLR where the supervising judge fails to remedy such failure.

This bill would undermine many of the jury reforms that have been put in place in recent years that have streamlined the jury selection process and thereby both improved the experience of potential jurors who have been called to perform their civil duty and made a wider cross-section of the citizenry available for jury service. The bill would lead to undue delay in the selection process through a stratified appeal process with regard to jury determinations and orders. Determinations made with respect to jury selection would be subject to review by a "Supervising Judge". Each such review would entail delay as the parties await the Supervising Judge and a court reporter. The delays will often be substantial as demands for the Supervising Judge will frequently be made with respect to concurrent jury voir dires or while the Supervising Judge is performing other duties. Additional delays may be occasioned by the review process itself.

Jury selection would be further encumbered by the provision authorizing parties to bring an Article 78 proceeding to review the Supervising Judge's alleged failure to remedy a deliberate failure to apply an authorized method of jury selection. Because of the time it takes for an Article 78 proceeding to be determined, such a proceeding brought during jury selection would severely stall the progress of the selection process.

Furthermore, there is no reason why the jury selection process alone, among various phases of a trial, should be subject to review by another trial-level Judge. Indeed, insofar as this legislation would permit one trial-level judge to override a determination of another, it would be inconsistent with the traditional role of a trial judge to preside over all aspects of a trial. See Balogh v HRB Caterers, 88 AD2d 136 (2d Dept. 1982).

The harmful effect of this legislation on the courts is well illustrated by the effect its implementation would have on the administration of tort cases against the City of New York. There are currently 11,290 City tort cases pending in the courts of the five boroughs of the City of New York. Ten years ago, the number of pending tort cases was almost double – 22,480. At this time, 3,336 cases are awaiting trial, and 7,954 cases are in discovery. The City has been working diligently and successfully over the past ten years to reduce the backlog of its tort cases, which have been clogging the courts and delaying resolutions. A very effective tool used by court administrators to accelerate case resolutions is to ensure that cases scheduled for trial are sent for jury selection in a timely fashion. The certainty of jury selection on scheduled trial dates has translated into the reduction of City tort cases beyond standards and goals to 597 as of June 2008 from 2,953 cases ten years ago. By enlarging the period it takes to select a jury and thus extending trials, this legislation would seriously undermine the salutary goals of further reducing the backlog of cases and providing for just and speedy resolutions of these matters.

Finally, this bill was introduced at the very end of the legislative session with virtually no input from the bar. We believe it inappropriate for a bill that will so affect jury selection to be enacted with such little involvement from those with an interest in this critical phase of our basic system of dispute resolution.

Accordingly, it is urged that this bill be disapproved.

Very truly yours,

MICHAEL R. BLOOMBERG, Mayor

By: Michelle L. Goldstein  
Director