Report of the **Advisory Committee** on **Local Courts**

to the Chief Administrative Judge of the Courts of the State of New York

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I. INTRODUCTION

The Local Courts Advisory Committee is one of the standing advisory committees established by the Chief Administrative Judge of the Courts pursuant to section 212(1)(q) of the Judiciary Law. The Committee advises the Chief Administrative Judge on all issues relating to the operations of the New York City Civil Court, New York City Criminal Court, District Courts, City Courts outside of New York City and Town and Village Courts. The Committee also acts as liaison with the professional associations of the judges and clerks of these courts and coordinates its actions and recommendations with other advisory committees established by the Chief Administrative Judge. During 2002, the Committee was comprised of 13 members, all judges, clerks, or attorneys of the local courts. As in the past, the Committee considered a wide range of issues, including practice and procedure, facilities, staffing and resources.

For 2003, the Committee recommends five new proposals for inclusion in the Chief Administrative Judge's legislative program, including proposals affecting the Criminal Procedure Law, the Penal Law, the Civil Practice Law and Rules, and the New York City Civil Court Act. These proposals are based on the Committee's own studies, examination of decisional law, and suggestions received from the bench and bar, as well as members of the public. The Committee also reviews and makes recommendations with respect to existing court rules.

In addition to recommending its own legislative program, the Committee reviews and comments on other pending legislative measures that concern practice and procedure in the local courts. This past year, the Committee focused on the proposed revisions to contempt provisions that were introduced to the legislature at the suggestion of the Chief Administrative Judge's Advisory Committee on Civil Practice.

Further, this year the Committee formed several subcommittees to study various issues that eventually may result in recommendations to change legislation or rules. These subcommittees are examining, among other issues, a proposal that all city courts accept small claims filings by mail and a proposal to implement changes in the way town and village courts store and access records.

One proposal recommended by the Committee last year was enacted by the Legislature and signed into law by the Governor in 2002. The proposal updated language in the New York City Civil Court Act § 401(c) that referred to "ribbon copy" – a relic of the typewriter era. The section now more accurately references the "original" version of the document. L. 2002, c. 74.

The Committee welcomes comments and suggestions concerning issues that arise in the local courts. Any comments and suggestions may be addressed to:

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II. NEW LEGISLATION

1. Simplified Turnover Proceedings
(NYCCCA §1812.1, CPLR §5221)

This proposal is an attempt to respond to the persistent complaint, particularly heard in the New York City Civil Court, that obtaining a judgment in small claims court is an exercise in futility because the judgment cannot be enforced absent time consuming and expensive procedures held in the regular part of the court. The proposal creates a temporary pilot program to address this problem by creating a new section, 1812.1 of the New York City Civil Court Act, to authorize a simplified turnover proceeding. The simplified turnover proceeding is meant to target the specific problem that typically arises when a judgment debtor has assets in a joint bank account—assets that belong to both the judgment debtor and a non-debtor.

It is fairly simple to obtain information about the existence and location of a judgment debtor's assets through the use of an information subpoena. Then, the assets may be restrained and an execution levied on them. However, a problem is encountered when the assets exist in a joint bank account. Due to the significant due process concerns that arise with respect to the rights of the non-judgment debtor, banks typically refuse to release assets from a joint account upon an execution. A common bank practice, in order to insure that the bank will not be liable for improper release of the assets, is for the bank to force a special proceeding to determine the rights to the assets. Currently, this special proceeding must take place in the regular part of the New York City Civil Court, as authorized by CPLR § 5221.

Bringing a special proceeding in the regular part of the court involves the judgment creditor having to, in essence, commence a second lawsuit. A filing fee is charged and the proceeding is made returnable on the daytime Civil Court calendar, as opposed to the evening Small Claims calendar. The process and expense seem to defeat the purpose of having a small claims part and frustrate many a judgment creditor.

This proposal sets up a special proceeding, the simplified turnover proceeding, that will occur within the small claims part of the New York City Civil Court, without the cost of another filing fee. In order to protect the due process interests of all the parties involved, the proposal sets up a fairly narrow category of cases in which the simplified turnover proceeding may be used. The limitations may be evaluated as the simplified turnover proceeding is used.

Subdivision (a) sets the parameters to determine which cases will be eligible for the simplified turnover proceeding:

1. There must be a recorded judgment of the small claims court.

2. At least one execution has been issued against the bank, but the bank has refused to turn over such assets. This requirement helps insure that out-of-court process has been attempted to collect the assets, but, essentially, the bank has forced a

special proceeding.

3. The bank has a place for the regular transaction of business in person within the jurisdiction of the small claims court. This requirement has jurisdictional, as well as venue, implications. The limitation is an effort to insure that there are minimal service and concomitant due process issues implicated in the pilot program. Additionally, as with the restraining device, it is best to notify the exact branch of the bank (rather than a non-local corporate office) of the proceeding regarding the assets.

If each of the above requirements is met, subdivision (b) entitles the judgment creditor to commence a "simplified turnover proceeding" against the bank in the same small claims court in which the underlying judgment was recorded. There is no fee for bringing such a simplified turnover proceeding. The simplified turnover proceeding may seek the release of assets in the amount of the underlying judgment. If the respondent holds less than that, the judgment in the simplified turnover proceeding will cover only so much of the underlying judgment as may be satisfied by the assets held – the bank cannot be forced to turn over more of the judgment debtor's assets than it holds. Pursuant to NYCCCA § 1901(c), no costs are taxed in a simplified turnover proceeding.

The simplified turnover proceeding authorized by this section is considered a special proceeding, which would technically be a separate proceeding from the underlying action. However, in order to help the court keep track of which proceeding goes with which judgment, the proposal provides that a simplified turnover proceeding shall receive the same index number as the underlying small claims action -- thus, no separate filing fee. But, despite the same index number, the simplified turnover proceeding should bear its own caption, largely because the parties are not the same. The caption should indicate in bold print "SIMPLIFIED TURNOVER PROCEEDING," name the judgment creditor as the petitioner and name the third party holder of assets as the respondent. The simplified turnover proceeding is commenced by notice of petition and petition, served in the same manner as the summons in the underlying small claims action. Again, this requirement is meant to minimize service and due process issues, especially because the result of a lack of appearance may be a default judgment against the bank.

Other due process issues arise with respect to the judgment debtor, who is not technically a party, but who is certainly interested in the fate of the assets. Accordingly, upon commencement of the simplified turnover proceeding, the court shall notify the judgment debtor of the commencement by serving a copy of the notice of petition and petition on the judgment debtor by first class mail. The service requirement is not so stringent because the judgment debtor already knows there is a judgment existing against him or her – service here is simply a courtesy to let the debtor know that serious action is being taken to collect on the judgment.

Yet other due process concerns arise when the assets are held in a joint account and, therefore, a non-debtor also has an interest in the account. Thus, the notice of petition is designed to offer courtesy to the judgment debtor, as well as more substantial due process protection to

other potential interveners. The notice of petition shall take the form prescribed by the Chief Administrator of the Courts and shall include all of the following information:

(A) the caption.

(B) the date, time and location, including the address of the court, upon which the petition will be heard.

(C) a statement to the respondent that the failure to appear may result in the entry of judgment against the respondent for an amount out of the assets held that may be used to satisfy the underlying judgment.

(D) a statement of notice to the judgment debtor that the merits of the underlying small claims action may not be contested and that the judgment debtor may intervene in the simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or to claim an exemption applies. The clearest "defense" that the judgment debtor has that could stop the proceeding from going forward is that the assets do not belong to him or her at all.

(E) a statement that any other person may intervene in the simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue. This statement simply puts all parties and the judgment debtor on notice that someone else may be involved in this matter.

(F) a statement that if the respondent is aware of a potential claim by any other person, the respondent shall provide notice of the simplified turnover proceeding to such person by first class mail. This requirement probably could not be enforced. However, as a practical matter, it is logical that the bank would want the non-debtor account holder to become involved in the proceeding in order to sort everything out in an expedient fashion. Indeed, if the full fledged CPLR § 5239 enforcement proceeding were to be used, the bank would probably want to interplead the non-debtor account holder if, for some reason, that person refused to intervene.

Similarly, the petition shall take the form prescribed by the Chief Administrator of the Courts and shall include information to offer various due process assurances to all involved:

(A) the caption.

(B) the name and address of the petitioner.

(C) the name and address of the respondent.

(D) the name and address of the judgment debtor—for ease of notification.

(E) the amount of the underlying judgment.

(F) an explanation of how the petitioner is aware that relevant assets are being held by the respondent. This requirement is not onerous. Pursuant to NYCCCA § 1812, the small claims clerk is required to issue an information subpoena upon request, for a nominal fee, and assist the judgment creditor. The information subpoena provides an explanation that will help to satisfy the court that the assets do exist and that will help the bank fulfill its efforts to avoid liability for the release of assets. Information may be provided in other forms, but an information subpoena is probably the most helpful for these purposes.

(G) the date of the issuance of the execution, the name and address of the executing officer and an indication of whether the assets are restrained.

(H) the total amount of relief requested.

The proposal provides for two possible scenarios at the return date of the petition: (1) there is no indication that there is a problem with releasing the assets (i.e., the judgment debtor does not dispute ownership; the judgment debtor does dispute ownership, but it is obvious that the dispute is without merit; there does not actually appear to be any other joint owner of the assets); or (2) the assets are apparently jointly owned assets, and a non-debtor "tenant" exists. In the first instance, subdivision (d) requires the court to order the bank to release from the assets a sum no greater than the amount of the underlying judgment.

In the latter instance, subdivision (e) requires the court to schedule a hearing of the matter no later than sixty days from the appearance date indicated in the notice of petition. Sixty days should provide adequate time to serve notice, as is required, but still provides a fairly expedited time frame. The small claims court shall serve the non-judgment debtor tenant, in the same manner as the summons in the underlying small claims action, with a copy of the notice of petition and petition, together with a notice of the hearing date. The service requirement is stringent here to cover due process concerns. The notice of hearing date shall state that the hearing is a special proceeding to determine claims to assets that are alleged to be jointly held assets and that failure to appear at the hearing may result in a waiver of interest in the assets. The waiver statement is another effort to cover due process concerns. These considerations, coupled with the mechanics of the hearing comply with the parameters established by case law to protect the rights of the non-debtor tenant. See, Mendel v Chervanyou, 147 Misc2d 1056 [NYC Civil Court, Kings County, 1990]; Household Finance Corporation v Rochester Community Savings Bank, 143 Misc2d 436 [Rochester City Court, 1989].

At the hearing, subdivision (f) requires the court to hear evidence from all of the interested parties in order to determine the amount of each party's interest in the assets. This step is necessary due to the state of the law regarding joint tenancy issues and bank accounts. See, Tayar v Tayar, 208 AD2d 609 [2d Dept, 1994]; Viggiano v Viggiano, 136 AD2d 630 [2d Dept, 1988]. The opening of a joint bank account creates a presumption, pursuant to the Banking Law,

that each named tenant is possessed of the whole account, such that the whole account is vulnerable to a judgment creditor's efforts against one of the joint tenants. However, the presumption is rebuttable because a presumption also exists that each party is entitled to half of the account. Joint tenants are possessed of the half and the whole – if they are each possessed of the whole, they are clearly each entitled to half. See, Mendel, supra. Or, another way to view it is that the debtor's whole possessory interest seems to make the entire account vulnerable to a money judgment, but the nondebtor tenant's reciprocal whole possessory interest would appear to prevent the release of the funds. See, Household Finance Corporation, supra. Thus, banks seek court orders before they release funds from joint accounts. Because of the dual presumptions, courts have determined that the burden of proof is on the person trying to obtain more than half of the funds in a joint account -- the judgment creditor. See, Mendel, supra; Household Finance Corporation, supra. Accordingly, if the judgment creditor is seeking more than one half of the funds, the judgment creditor must provide evidence that the judgment debtor has a possessory interest in more than one half of the funds.

Aside from the Banking Law presumptions, several other issues may arise that would prevent the bank from releasing funds to this particular judgment creditor. There may be a priority established to the funds by another person; or, there may be stays of bankruptcy that would affect the funds. Accordingly, the proposal sets up a roadmap to help judges become aware of these issues, and requires that, during the course of the hearing, the court shall elicit information pertinent to these matters:

1. whether any people, other than those present and those who were served notice of the hearing but are not present, may claim an interest in the assets; and

2. whether any people claiming a possessory interest in the assets have been or are currently involved in bankruptcy proceedings; and

3. whether any levy, lien, execution or restraint has ever been placed on the assets as a result of any action or proceeding other than the underlying small claims action; and

4. whether any exemptions apply to the assets such that they are not available for collection.

At this point, the proposal, again, provides for two possible scenarios: (1) the court is satisfied that all interested people were served with notice of the hearing, that none of the people claiming a possessory interest in the assets is or has been involved in a bankruptcy proceeding, and that no other levy, lien, execution or restraint exists that would establish another person's priority to the assets; or (2) the small claims court determines that the adverse claims are too complex to be dispensed with upon a simplified turnover proceeding. In the first instance, subdivision (g) requires the court to determine the possessory interest of each person claiming an interest in the assets. Out of the amount of assets determined to be possessed by the judgment

debtor, the court shall order the third party holder of assets to release a sum no greater than the amount of the underlying judgment. Obviously, if the third party holds less than the full amount of the underlying judgment, it will only be obligated to turn over the lesser amount.

In the latter instance, which could occur for a variety of reasons beyond the enumerated due process, priority or bankruptcy issues, subdivision (h) requires the court to dismiss the petition, with leave to the judgment creditor to bring a special proceeding to enforce a judgment in the regular part of the court pursuant to CPLR Article 52. There seems to be no way to avoid sending a judgment creditor in a complex case to the regular part of court for regular special proceedings. Similarly, there is no current way to help judgment creditors whose cases do not fall into the category established by subdivision (a) of the proposal. All of these creditors, however, may take solace in the fact that the existing proceedings do work. See, House v Lalor, 119 Misc 2d 193 [Sup Ct NY County 1983] [NYC sheriff sold at auction a judgment debtor's $200,000 interest in a co-op for $15,000, $350 of which was turned over to the judgment creditor].

Finally, this act is set to take effect on the ninetieth day after it shall become a law and shall apply to all judgments entered on and after such effective date. The act shall expire December 31, 2008, at which time the efficacy of the program should be evaluated for continuation and possible expansion.

Proposal

AN ACT to amend the New York City civil court act and the civil practice law and rules, in relation to establishing a simplified turnover proceeding to aid in the enforcement of certain judgments obtained in the small claims part of the civil court of the city of New York

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

Section 1. The New York city civil court act is amended by adding a new section 1812.1 to read as follows:

§ 1812.1. Simplified Turnover Proceedings. (a) The special procedures set forth in subdivision (b) hereof shall be available only where:

1. there is a recorded judgment of the small claims court; and

2. at least one execution has been issued against the third party holder of assets, but the

third party holder of assets has failed to turn over such assets following such execution; and

3. the third party holder of assets resides or is regularly employed or has a place for the regular transaction of business in person within the jurisdiction of the small claims court in which the judgment is recorded.

(b) A judgment creditor shall be entitled to commence a "simplified turnover proceeding" against the third party holder of the assets in the same small claims court in which the underlying judgment was recorded. No fee pursuant to article 19 of this act shall be charged for bringing such a simplified turnover proceeding. The simplified turnover proceeding may seek the release of assets in the amount of the underlying judgment.

(c) The simplified turnover proceeding authorized by subdivision (b) of this section is a special proceeding that shall receive the same index number as the underlying small claims action but bear its own caption, which caption should indicate in bold print "SIMPLIFIED TURNOVER PROCEEDING" and name the third party holder of assets as the respondent. The simplified turnover proceeding is commenced by notice of petition and petition, which shall be served in the same manner as the summons in the underlying small claims action. Upon commencement of the simplified turnover proceeding, the court shall notify the judgment debtor thereof by serving him or her, by first class mail, with a copy of the notice of petition and petition on the judgment debtor by first class mail.

2. The notice of petition shall be in a form prescribed by the chief administrator of the courts and shall include all of the following information:

(A) the caption, as described above;

(B) the date, time and location, including the address of the court, where the petition will

be heard;

(C) a statement to the respondent that the failure to appear may result in the entry of judgment against the respondent for an amount out of the assets held that may be used to satisfy the underlying judgment;

(D) a statement of notice to the judgment debtor that the merits of the underlying small claims action may not be contested and that the judgment debtor may intervene in the simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or to claim that an exemption applies to the assets;

(E) a statement that any other person may intervene in the simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue;

(F) a statement that if the respondent is aware of a potential claim to the assets by any other person, the respondent shall provide notice of the simplified turnover proceeding to such other person by first class mail.

3. The petition shall be in a form prescribed by the chief administrator and shall include all of the following information:

(A) the caption, as described above;

(B) the name and address of the petitioner;

(C) the name and address of the respondent;

(D) the name and address of the judgment debtor;

(E) the amount of the judgment;

(F) an explanation of how the petitioner is aware that relevant assets are being held by the respondent;

(G) the date of the issuance of the execution, the name and address of the executing officer and an indication of whether the assets are restrained;

(H) the total amount of relief requested.

(d) If, upon the appearance date indicated in the notice of petition, it is evident that the assets at issue belong to the judgment debtor and the judgment debtor alone but are not being released by the respondent, the court shall order the respondent to release from the assets held a sum no greater than the amount of the underlying judgment.

(e) If, upon the appearance date indicated in the notice of petition, it is evident that any person other than the judgment debtor has claimed an interest in the assets at issue, the court shall schedule a hearing of the matter no later than sixty days from the appearance date indicated in the notice of petition. The court shall serve the non-judgment debtor, in the same manner as was used to serve the summons in the underlying action, with a copy of the notice of petition and petition, together with a notice of the hearing date. The notice of hearing date shall state that the hearing is a special proceeding to determine claims to assets that are alleged to be jointly held assets and that failure to appear at the hearing may result in a waiver of interest in the assets.

(f) At the hearing, the court shall hear evidence from all of the interested parties in order to determine the amount of each party's interest in the assets. If the judgment creditor is seeking more than one half of the assets, the judgment creditor must provide evidence that the judgment debtor has a possessory interest in more than one half of the assets. During the course of the hearing, the court shall elicit the following information:

1. whether any people, other than those present and those who were served notice of the hearing but are not present, may claim an interest in the assets; and

2. whether any people claiming a possessory interest in the assets have been or are currently involved in bankruptcy proceedings; and

3. whether any levy, lien, execution or restraint has ever been placed on the assets as a result of any action or proceeding other than the underlying small claims action; and

4. whether any exemptions apply to the assets such that they are not available for collection.

(g) If, upon the hearing of evidence, the court is satisfied that all interested people were served with notice of the hearing, none of the people claiming a possessory interest in the assets is or has been involved in a bankruptcy proceeding, and no other levy, lien, execution or restraint exists that would establish another person's priority to the assets, the court shall determine the possessory interest of each person claiming an interest in the assets. Out of the amount of assets determined to be possessed by the judgment debtor, the court shall order the third party holder of assets to release to the judgment creditor a sum no greater than the amount of the underlying judgment.

(h) If, upon the hearing of evidence, the court determines that for any reason the adverse claims are too complex to be dispensed with upon a simplified turnover proceeding, the court shall dismiss the petition, with leave to the judgment creditor to bring a special proceeding to enforce the judgment in the regular part of the court pursuant to CPLR Article 52.

§ 2. Paragraph 3 of subdivision (a) of section 5221 of the civil practice law and rules is amended to read as follows:

3. If the judgment sought to be enforced was entered in the [municipal court of the city of New York, the city court of the city of New York or the] civil court of the city of New York,

and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within that city, a special proceeding authorized by this article shall be commenced in the civil court of the city of New York. If the judgment sought to be enforced was entered in the small claims part of the civil court of the city of New York, a simplified turnover proceeding may be brought as set forth in section 1812.1 of the New York city civil court act.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all judgments entered on and after such effective date. This act shall expire December 31, 2008.

Proposed Rule

§ 208.41 (o) **Simplified Turnover Proceedings**

(1) The notice of petition shall be in substantially the following form:

CIVIL COURT OF THE CITY OF NEW YORK CASE # (UNDERLYING CASE)

COUNTY OF _____

SIMPLIFIED TURNOVER PROCEEDING

SMALL CLAIMS PART NOTICE OF PETITION

_____

Petitioner

vs.

Respondent

_____

To: (Respondent)_____

(Address)_____

You, as respondent in a small claims simplified turnover proceeding must appear in the Small Claims Court as follows:

Date: _____

Time: _____

Location: _____

Address: _____

This simplified turnover proceeding has been initiated by (Petitioner) to recover assets being held by you on behalf of (Judgment Debtor).

NOTICE TO RESPONDENT: Failure to appear as indicated above may result in the entry of a judgment against you for an amount out of the assets held that may be used to satisfy the underlying judgment. If you are aware of a potential claim to these assets by any other person, you should notify the person of this simplified turnover proceeding by first class mail as soon as possible.

NOTICE TO JUDGMENT DEBTOR: You may intervene in this simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or for claiming that an exemption applies to the assets. You may not contest the merits of the underlying judgment.

NOTICE: Any other person may intervene in this simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue.

_____ _____

(Date) Chief Clerk

(2) The petition shall be in substantially the following form:

CIVIL COURT OF THE CITY OF NEW YORK CASE # (UNDERLYING CASE)

COUNTY OF _____

SIMPLIFIED TURNOVER PROCEEDING

SMALL CLAIMS PART PETITION

_____

Petitioner

vs.

Respondent

_____

The Petition of (Petitioner)_____ alleges as follows:

1. Petitioner is the Judgment Creditor in the small claims matter captioned _____, bearing the same Index Number as set forth above.

2. A total judgment was entered in that case against (Judgment Debtor)_____ (the Judgment Debtor) in the amount of $_____.

3. The following information indicates that assets belonging to the Judgment Debtor are held by you: _____

_____

_____

4. An execution was issued on (date)____ and served upon you by _____ (a Sheriff/a City Marshal), (address of enforcement officer)_____. (A restraining notice/a garnishment has also been served.)

5. However, you have refused to turn over assets in your possession that belong to the Judgment Debtor.

6. Accordingly, Petitioner requests that a judgment be entered in this simplified turnover proceeding against you, as the holder of assets belonging to the Judgment Debtor, in the amount of:

$_____ the underlying judgment

TOTAL $_____ .

Date	Petitioner
Petitioner's Name & Address:	Respondent's Name & Address:
Judgment Debtor's Name & Address:	

2. Venue of Enforcement Proceedings
(CPLR §5221)

This measure would amend CPLR 5221 to limit the venue of an enforcement proceeding when the enforcement proceeding is based on an underlying consumer credit transaction.

In 1973, as part of the Governor's Consumer Protection Program, CPLR 503 and New York City Civil Court Act § 301(a) were amended to provide that suits arising out of consumer credit transactions must be brought in either the county where the buyer resides or the county where the purchase was made. The main purpose of the amendments was "to protect consumers by limiting the places where a creditor can bring suit arising out of a consumer credit transaction." See, Mem of State Executive Dept, 1973 McKinney's Session Laws of NY, at 2171.

The amendments specifically changed a venue practice that previously had been authorized under the Civil Court Act. That Act and the CPLR provisions that followed it had permitted venue in plaintiff's county. However, the 1973 amendments precluded the laying of venue in the plaintiff's county in connection with consumer credit transactions. See, Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 29A, Judiciary – Court Acts, NYCCCA § 301, at 98. These venue changes were significant, and the policy which led to the enactment of CPLR 503(f) and the amendment of NYCCCA § 301 was not to be lightly disregarded. See, McLaughlin, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR, at 19.

For the sake of consistency, it appears that this venue policy also should apply to the enforcement of judgments obtained in connection with consumer credit transactions. It does not make sense to protect the consumer's venue interests with respect to the obtaining of the underlying judgment, but then permit the creditor to seek enforcement in any county, which would implicate the same travel burdens at issue in the underlying action.

However, CPLR 5221, the law governing the venue of enforcement proceedings was not altered in 1973, leaving an apparent conflict between the venue provisions of the New York City Civil Court Act and the CPLR and the enforcement provisions of the CPLR. CPLR 5221(a)(3) provides that a judgment entered in the New York City Civil Court may be enforced within that court as long as the respondent resides or is regularly employed or has a place for the regular transaction of business in person within New York City. There is no restriction as to the county within New York City, and legislative history indicates that this resulting broad scope of venue was intentional.

A 1959 legislative report indicates that the former Civil Practice Act had provided a narrow scope of venue for judgment proceedings – a proceeding on a judgment of the Municipal Court of the City of New York was required to be instituted in the court in the county where the debtor lives or works. Subsequently, the CPLR created a broader scope of venue:

> Because of the ease of transportation within New York city, and in accordance with other provisions of the CPLR, New York city is treated as a single unit, and a proceeding . . . may be instituted in any county in the city of New York. See, Legislative Studies and Reports following CPLR 5221.

However, this decision with respect to the broad scope of venue pre-dated the significant policy change with respect to consumer credit transactions. Since the provisions of the CPLR have changed with respect to this subject area, the enforcement provisions probably should have been amended to follow suit in 1973. This measure corrects that disparity.

Proposal

AN ACT to amend the civil practice law and rules, in relation to the venue of enforcement proceedings based on underlying judgments obtained in actions involving consumer credit transactions

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

Section 1. Paragraph 3 of subdivision (a) of section 5221 of the civil practice law and rules is amended to read as follows:

3. If the judgment sought to be enforced was entered in the [municipal court of the city of New York, the city court of the city of New York or the] civil court of the city of New York, and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within that city, a special proceeding authorized by this article shall be commenced in the civil court of the city of New York. If the underlying judgment was entered in an action arising out of a consumer credit transaction where a purchaser, borrower, or debtor is a defendant, and the defendant resides in the city of New York or the transaction took place in the city of New York, then a special proceeding authorized by this article shall be commenced in the county within the city of New York in which the judgment was entered.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law and

shall apply to all judgments entered on and after such effective date.

3. Electronic Filing of Traffic Tickets
(CPL § 1.20)

This measure would amend pertinent sections of the Criminal Procedure Law to clarify procedural measures related to the Department of Motor Vehicles' electronic traffic ticketing program.

Currently, a pilot program has been commenced by the Department of Motor Vehicles, which allows for electronic traffic ticketing. The program permits police officers to "write" tickets on a computer and transfer the pertinent information directly to a court computer, in place of filing a paper ticket. The traffic offender still receives a paper ticket, but the traffic court conducts all of the pertinent business related to the ticket by computer.

These amendments help insure that, for this pilot program, there can be no technical challenges to jurisdiction as a result of the commencement by electronic filing. The change to the Criminal Procedure Law definition of "commencement of criminal action" would mirror the 1999 change that was made to CPLR 304 (regarding "method of commencing action or special proceeding") when the filing by electronic means pilot program was instituted in civil courts. See, 22 NYCRR § 202.5-b. The change to the reference to "written accusation" is meant to clarify that a ticket may be considered "written" electronically, as long as the form of the ticket is prescribed as an electronic format by the Commissioner of Motor Vehicles. This clarification is desirable because, in the past, an appellate court examined the status of the law and found that the transmission of electronic data to a court computer did not constitute filing, particularly in the absence of a written, verified accusation. See, People v Gilberg, 166 Misc2d 772 (Sup Ct App Term, 2d Dept 1995); see also, People v Pilewski, 173 Misc2d 800 (Justice Ct, Village of Great Neck 1997). However, the Gilberg case was decided based on the status of the law in 1995, and its current inapplicability should be confirmed by the legislature.

The Uniform Rules for Courts Exercising Criminal Jurisdiction regarding the form of papers filed in criminal court (22 NYCRR § 200.3) already reference CPLR 2101, which, as of 1999, refers to papers filed by electronic means. However, these statutory amendments will help insure the success of the electronic ticketing program by clarifying the law in this regard.

Proposal

AN ACT to amend the criminal procedure law, in relation to permitting the electronic filing of papers in local criminal courts, where authorized by law

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

Section 1. Subdivision 5 of section 1.20 of the criminal procedure law, set out first, is

amended to read as follows:

5. "Simplified traffic information" means a written accusation, including an accusation written in electronic form where authorized by law, more fully defined and described in article one hundred, by a police officer or other public servant authorized by law to issue same, filed with a local criminal court, which, being in a brief or simplified form prescribed by the commissioner of motor vehicles, charges a person with one or more traffic infractions or misdemeanors relating to traffic, and which may serve both to commence a criminal action for such offense and as a basis for prosecution thereof.

§ 2. Paragraph (b) of subdivision 5 of section 1.20 of the criminal procedure law, set out second, is amended to read as follows:

(b) "Simplified traffic information" means a written accusation, including an accusation written in electronic form where authorized by law, by a police officer or other public servant authorized by law to issue same, more fully defined and described in article one hundred, filed with a local criminal court, which, being in a brief or simplified form prescribed by the commissioner of motor vehicles, charges a person with one or more traffic infractions or misdemeanors relating to traffic, and which may serve both to commence a criminal action for such offense and as a basis for prosecution thereof.

§ 3. Subdivision 17 of section 1.20 of the criminal procedure law is amended to read as follows:

17. "Commencement of criminal action." A criminal action is commenced by the filing, including filing by electronic means where authorized by law, of an accusatory instrument against a defendant in a criminal court, and, if more than one accusatory instrument is filed in the

course of the action, it commences when the first of such instruments is filed.

§ 4. This act shall take effect immediately.

4. Issuance of a Summons in the NYC Civil Court, District Courts, and City Courts
(NYCCCA §§ 401(a), 409; UDCA §§ 401(a), 409; UCCA §§ 401(a), 409)

This measure would require the filing of a summons, and therefore the purchase of an index number, before serving the summons issued by the New York City Civil Court, the District Courts and the City Courts.

The current procedure set forth in § 401(a) of the Uniform Court Acts permits an attorney to serve a summons on a defendant prior to the purchase of an index number. Within a certain number of days (14 in the NYC Civil Court, 20 in the District Courts, 20 in the City Courts) after service and mailing (if necessary) of the summons, the plaintiff's attorney must file the original summons and affidavit of service with the court and, at that point, purchase an index number. NYCCCA § 409; UDCA § 409; UCCA § 409; 22 NYCRR § 210.6(d). The defendant then answers within a specified period either through an attorney or in person to the clerk.

A problem arises when the defendant answers in person to the clerk, but the summons has not been filed. The clerk will accept the answer and periodically check filings to determine if the summons has been filed. If the summons is filed, the case will be added to the calendar. If the summons is not filed, the clerk may continue to search for a while. However, in the NYC Civil Court, the clerk will place the answers that do not have matching summonses into storage after a year. Eventually, the answers are discarded. Even with a computer management system, this process is cumbersome. It also creates a danger that the clerk will miss the match, and a filed summons will lead to a judgment entered against a defendant who thinks he or she has complied with answering requirements.

The NYC Civil Court has noted a recent increase in the number of summonses served but not filed. In Kings County, since the year 2000, there are at least 1200 answers without matching summonses. Apparently, there are 271 answers connected to unfiled summonses that were initiated by the office of a particular attorney.

Aside from the expenditure of time and resources, the current system causes a financial toll. The clerks' futile searches for filed summonses are expenditures of time for which there is no revenue stream in return. If all of the "outstanding" summonses were filed in Kings County, there would be revenue of $42,000 in filing fees. If the one law office filed its summonses, there would be revenue of at least $9,485. A further concern is that the summonses are being served but intentionally not filed in an effort to harass or frighten defendants.

Requiring that an index number be purchased before the service of papers would generate revenue, conserve clerks' time, and protect defendants from untoward use of the suit commencement system. This procedure already is followed in the landlord-tenant part of the NYC Civil Court, as well as in Supreme Court.

Proposal

AN ACT to amend the New York city civil court act, the uniform district court act and the uniform city court act, in relation to the method of commencing and filing a lawsuit

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

Section 1. Subdivision (a) of section 401 of the New York city civil court act is amended to read as follows:

(a) The summons may be issued [by the plaintiff's attorney or, if the plaintiff appears without attorney,] by the clerk of the court. The original summons shall be filed with the clerk at the time of issuance.

§ 2. Subdivision (a) of section 409 of the New York city civil court act, as amended by chapter 698 of the laws of 1976, is amended to read as follows:

(a) [A copy of the summons with proof of service] The original summons shall be filed with the clerk of the court at the time of issuance of the summons. Proof of service of a copy of the summons shall be filed with the clerk of the court in the county in which the action is brought:

§ 3. Subdivision (a) of section 401 of the uniform district court act is amended to read as follows:

(a) The summons may be issued [by the plaintiff's attorney or, if the plaintiff appears without attorney,] by the clerk of the court. The original summons shall be filed with the clerk at the time of issuance.

§ 4. Subdivision (a) of section 409 of the uniform district court act, as amended by chapter 330 of the laws of 1975, is amended to read as follows:

(a) [A copy of the summons with proof of service]The original summons shall be filed with the clerk of the court at the time of issuance of the summons. Proof of service of a copy of the summons shall be filed with the clerk of the court in the district in which the action is brought:

§ 5. Subdivision (a) of section 401 of the uniform city court act is amended to read as follows:

(a) The summons may be issued [by the plaintiff's attorney or, if the plaintiff appears without attorney,] by the clerk of the court. The original summons shall be filed with the clerk at the time of issuance.

§ 6. Subdivision (a) of section 409 of the uniform city court act, as amended by chapter 216 of the laws of 1992, is amended to read as follows:

(a) The rules of the court shall require the filing of the original summons with the clerk in all cases [or in designated categories of cases] at the time of issuance.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all actions commenced on or after such effective date.

5. Increasing the Criminal Mischief Threshold Levels
(Penal Law §§ 145.05, 145.10)

This measure seeks to increase the threshold level for the offenses of criminal mischief in the third degree (a class E felony) and criminal mischief in the second degree (a class D felony). Currently, a person is guilty of criminal mischief in the third degree when he or she damages another person's property in an amount exceeding $250. A person is guilty of criminal mischief in the second degree when he or she damages another person's property in an amount exceeding $1,500. These monetary levels were last amended in 1971 and should be adjusted to reflect the reality of current costs.

A helpful parallel can be drawn using the grand larceny threshold levels, which levels were amended in 1986. Grand larceny in the fourth degree (a class E felony) occurs when the value of the stolen property exceeds $1,000. Penal Law § 155.30. Grand larceny in the third degree (a class D felony) occurs when the value of the property exceeds $3,000. Penal Law § 155.35.

Accordingly, the criminal mischief threshold levels should be amended to reflect similar amounts. Criminal mischief in the third degree (the class E felony) should lie where the value of the damage exceeds $1,000, and criminal mischief in the second degree (the class D felony) should lie where the value of the damage exceeds $3,000.

Proposal

AN ACT to amend the penal law, in relation to criminal mischief in the second and third degrees

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

Section 1. Section 145.05 of the penal law, as amended by chapter 961 of the laws of 1971, is amended to read as follows:

§ 145.05. Criminal mischief in the third degree. A person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she damages property of another person in an amount exceeding [two hundred fifty] one thousand dollars.

Criminal mischief in the third degree is a class E felony.

§ 2. Section 145.10 of the penal law, as amended by chapter 961 of the laws of 1971, is amended to read as follows:

§ 145.10. Criminal mischief in the second degree. A person is guilty of criminal mischief in the second degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding [one thousand five hundred] three thousand dollars.

Criminal mischief in the second degree is a class D felony.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

III. PREVIOUSLY ENDORSED LEGISLATION

1. Increase Jurisdictional Limits
(UDCA §1801, UCCA §1801, UJCA §§201, 202, 1801)

This measure is being introduced at the request of the Chief Administrative Judge upon the recommendation of his Local Courts Advisory Committee. This measure would amend section 1801 in both the Uniform District Court Act and the Uniform City Court Act to increase the jurisdictional limit of the small claims and commercial claims parts of District Courts and upstate City Courts from $3,000 to $5,000. These jurisdictional limits last were increased nine years ago — from $2,000 to $3,000. *See,* L. 1994, c. 76. This $3,000 limit now is no longer adequate to cover many basic claims, with the result that claimants are forced to choose between artificially lowering their claims in order to fall within it or litigating outside of the small claims and commercial claims courts. Their dilemma defeats the purpose of having a small claims or commercial claims part to help simplify the litigation process.

Regarding the Justice Courts, this measure would amend sections 201, 202 and 1801 of the Uniform Justice Court Act to increase both the jurisdiction of their regular parts, as well as the jurisdiction of their small claims parts, from $3,000 to $5,000. The jurisdictional limit of their regular parts has not been changed in over 25 years — since 1977, when it was raised from $2,000 to $3,000. *See* L. 1977, c. 685. The jurisdictional limit of their small claims parts has not increased since 1994, when it also was raised from $2,000 to $3,000. It certainly is past time to increase the civil jurisdictional limits of the Justice Courts; and, since the Justice Courts perform essentially the same functions as the District Courts and City Courts in the many upstate communities where the latter do not sit, a companion increase in their small claims jurisdiction is no less in order for them.

This measure would take effect on the first day of January next succeeding the date on which it becomes law and would apply to matters filed on or after that date.

Proposal

AN ACT to amend the uniform district court act, the uniform city court act, and the uniform justice court act, in relation to civil jurisdictional limits

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

Section 1. Section 1801 of the uniform district court act, as amended by chapter 76 of the laws of 1994, is amended to read as follows:

§1801. Small claims defined. The term "small claim" or "small claims" as used in this act shall mean and include any cause of action for money only not in excess of [three] five thousand dollars exclusive of interest and costs, provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within a district of the court in the county.

§2. Section 1801 of the uniform city court act, as amended by chapter 76 of the laws of 1994, is amended to read as follows:

§1801. Small claims defined. The term "small claim" or "small claims" as used in this act shall mean and include any cause of action for money only not in excess of [three] five thousand dollars exclusive of interest and costs, provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within the county. [In a city court having a basic monetary jurisdiction in civil matters of less than one thousand dollars, the small claims jurisdiction of such court shall be equal to its basic monetary jurisdiction.]

§3. Subdivision a of section 201 of the uniform justice court act, as amended by chapter 685 of the laws of 1977, is amended to read as follows:

a. The court shall have jurisdiction as set forth in this article and as elsewhere provided by law[, subject, in the case of a city court governed by this act, to the limitations stated in §2300(b)(2)(i) of this act]. The phrase "[$3000] $5000", whenever it appears herein, shall be taken to mean "[$3000] $5000 exclusive of interest and costs"[, except that, in the case of a city court governed by this act whose monetary jurisdiction is, pursuant to §2300(b)(2)(i) of this act, below $3000, it shall be taken to mean such lesser sum as is applicable in the particular court, exclusive of interest and costs].

§4. Section 202 of the uniform justice court act, as amended by chapter 685 of the laws of 1977, is amended to read as follows:

§202. Money actions and actions to recover chattels. Notwithstanding any other provision of law, the court shall have jurisdiction of actions and proceedings for the recovery of money or chattels where the amount sought to be recovered or the value of the property does not exceed [$3000] $5000.

§5. Section 1801 of the uniform justice court act, as amended by chapter 76 of the laws of 1994, is amended to read as follows:

Section 1801. Small claims defined. The term "small claim" or "small claims" as used in this act shall mean and include any cause of action for money only not in excess of [three] five thousand dollars exclusive of interest and costs, provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within the municipality where the court is located. However, where a judge of the county court, pursuant to subdivision (g) of section three hundred twenty-five of the civil practice law and rules, transfers a small claim from the town or village court having jurisdiction over the matter to another town or village court within the same county, the court to which it is transferred shall have jurisdiction to determine the claim.

§6. This act shall take effect on the first day of January next succeeding the date on which it becomes a law and shall apply to actions or proceedings filed on or after that date.

2. Permit Corporate Counterclaims in Small Claims Court
(NYCCCA §1809, UCCA §1809, UDCA §1809 and UJCA §1809)

Subdivision one of section 1809 of each of the Uniform Court Acts prohibits corporations from bringing claims in a small claims court. Subdivision two of that section, however, does permit a corporation to appear as a *defendant* in small claims court.

There is some uncertainty in New York as to whether a corporate defendant in an action in a small claims court may bring a counterclaim in that action. The statute is unclear and the only appellate caselaw addressing the issue is a 1997 decision of the Appellate Term, Second Department. *See, Marino v. N.A.S. Plumbing*, 175 Misc2d 519.

The Committee believes the issue should be clarified, and that section 1809(2) of the Uniform Court Acts should be amended expressly to authorize corporate counterclaims in small claims, under certain circumstances. As a defendant, a corporation should generally be no less able to file a counterclaim in a small claims court than any class of small claims defendant. Such a practice best serves the administration of justice and, within the limitations proposed in our measure, should come at no meaningful cost to the objectives underlying small claims court. These limitations, articulated by the *Marino* court in its decision upholding a corporate counterclaim in a small claims action, are that the counterclaim fall within the small claims court's monetary jurisdiction, that it "[be] related to the main claim and [that it be] not overly complex."

Proposal

AN ACT to amend the New York city civil court act, the uniform district court act, the uniform city court act, and the uniform justice court act, in relation to permitting a corporate defendant to interpose a counterclaim in small claims court

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

Section 1. Subdivision 2 of section 1809 of the New York city civil court act, as added by chapter 200 of the laws of 1976 and amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the

corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§2. Subdivision 2 of section 1809 of the uniform district court act, as added by chapter 200 of the laws of 1976 and amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§3. Subdivision 2 of section 1809 of the uniform city court act, as added by chapter 200 of the laws of 1976 and amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§4. Subdivision 2 of section 1809 of the uniform justice court act, as added by chapter 200 of the laws of 1976 and amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§5. This act shall take effect on the first day of January next succeeding the date on

which it becomes a law and shall apply to small claims brought on or after that date.

3. Provide Local Criminal Courts With the Ability to Enforce Sentencing for the Unlawful Possession of an Alcoholic Beverage by a Minor (Alcoholic Beverage Control Law § 65-c)

This measure amends section 65-c of the Alcoholic Beverage Control Law to provide courts with a mechanism to insure that the conditions of sentence are met for an offense of unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years.

The proposal grants to the courts the power to enter a default judgment, upon notice and an opportunity to be heard, against a person charged with unlawful possession of an alcoholic beverage who has failed to pay a fine or complete an alcohol awareness program or complete community service within the amount of time established by the court to do so. As a result of this change, courts will be able to enforce their sentences for unlawful possession of an alcoholic beverage. Without this ability, the courts are powerless to insure that the conditions of sentence are met.

The proposal provides that the clerk of the court that had jurisdiction over the conviction will file the default judgment with the county court. At the time of filing, the county clerk shall enter the transcript of judgment without charging a fee until such time as the judgment is satisfied. When the default judgment is collected, the filing costs will be added to the recovery and be provided to the county clerk's office.

Proposal

AN ACT to amend the alcoholic beverage control law, in relation to entry of default judgments against persons under age twenty-one who fail to pay fines or complete an alcohol awareness program or community service

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

Section 1. Subdivision 3 of section 65-c of the alcoholic beverage control law, as amended by chapter 389 of the laws of 1993, is amended to read as follows:

3. Any person who unlawfully possesses an alcoholic beverage with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace

officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars and/or completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law and/or an appropriate amount of community service not to exceed thirty hours. In the event a person convicted of unlawful possession of an alcoholic beverage with intent to consume fails to pay a fine within the period of time established by such court for payment of such fine, the court having jurisdiction may enter a default judgment in the amount of the fine. In the event a person convicted of unlawful possession of an alcoholic beverage with intent to consume fails to complete an alcohol awareness program or complete community service pursuant to this section within the period of time established by such court for the completion of such program or community service, the court having jurisdiction may enter a default judgment in the amount of a fine that would have been authorized by law upon the conviction. Prior to entering any default judgment and at least thirty days after the expiration of the original date established by such court for the payment of such fine or completion of such program or community service, the clerk of the court shall notify the person charged by certified mail: (a) of the impending default judgment in the amount of a fine determined by the court, which amount must be authorized by the law governing the conviction, and which judgment will be filed with the county clerk of the county in which the person convicted is located; (b) of a date, no less than ten days and no more than thirty days from the date of the mailing of the notice, on which the person convicted may be heard to contest such entry of a default judgment; (c) and that a default

judgment may be avoided by paying the fine or completing the alcohol awareness program or community service within thirty days of the sending of such notice or by appearing on the date specified and making other arrangements with the court for the fulfillment of the sentence. In no case shall a default judgment be entered more than two years after the expiration of the time prescribed for originally paying the fine or completing the alcohol awareness program or community service. Any judgment entered pursuant to default shall be civil in nature. The clerk of the court of jurisdiction over the conviction shall file the default judgment with the county clerk, who shall enter a transcript of judgment without charging a fee until such time as the default judgment is satisfied. The default judgment shall have the full force and effect of a judgment duly docketed in the office of such county clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record and such default judgment shall remain in full force and effect for eight years notwithstanding any other provision of law.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall become a law and shall apply to all actions and proceedings commenced on or after such effective date.

4. Notice of Small Claims and Commercial Claims Judgments and Time for Satisfying a Small Claims Judgment
(NYCCCA §1811-A, §1811-(b)(1) and 1812(a); UDCA §1811-A, §1811(b)(1) and 1812(a); UCCA §1811-A, §1811(b)(1) and 1812(a); UCCCA §1811-A, §1811(b)(1) and 1812(a); UJCA §1811(b)(1) and 1812(a))

This measure would amend section 1811-A of the New York City Civil Court Act, the Uniform District Court Act and the Uniform City Court Act to require courts to send a notice of judgment to the judgment creditor and to the judgment debtor in commercial claims actions. It also would amend sections 1811(b)(1) and 1812(a) of the Uniform Court Acts to eliminate language indicating that a judgment debtor has 30 days to pay a small claims judgment.

Pursuant to section 1811 of the New York City Civil Court Act and the Uniform City and District Court Acts, the courts must send a notice of judgment to all small claims judgment debtors and creditors. The notice to the judgment debtor must specify the consequences of failing to pay the judgment. The notice to the judgment creditor must contain information about the judgment creditor's rights with respect to enforcement of the judgment. Finally, both parties must be notified of the time for taking an appeal from a small claims judgment. In contrast, no provision is made for notice to parties to commercial claims actions, leaving them ignorant of their rights and responsibilities with respect to a commercial claims judgment. As a result, commercial claims judgments may remain unpaid while one side determines the means for enforcement and the other is unaware that good reason exists to pay the judgment sooner rather than later. Moreover, the losing party may, through ignorance, forego the chance to appeal an unjust decision.

There is no rationale for treating parties in small claims actions differently from parties in commercial claims actions. Both should be informed of the rights or obligations that flow from the judgments entered in these actions and should be advised of the time for taking an appeal from those judgments.

This measure also would amend sections 1811(b)(1) and 1812(a) of the Uniform Court Acts to eliminate language indicating that a judgment debtor has 30 days to pay a small claims judgment. In 1991, section 1812(d) of the Uniform Court Acts was amended to eliminate the 30-day delay before an information subpoena could be issued to aid a judgment creditor in enforcing a small claims judgment. Sections 1811(b)(1) and 1812(a), however, were not amended to eliminate language indicating that a judgment debtor has 30 days to pay a small claims judgment. This measure would make these sections consistent.

Our Advisory Committee previously had proposed amending sections 1811 and 1812 of the Uniform Court Acts to eliminate language indicating that a judgment debtor has 30 days to pay a small claims judgment. That proposal now is included in this measure.

<u>Proposal</u>

AN ACT to amend the New York city civil court act, the uniform city court act, the uniform district court act, and the uniform justice court act, in relation to notice of small claims and commercial claims judgments and time for satisfying small claims judgments

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

Section 1. Paragraph 1 of subdivision (b) of section 1811 of the New York city civil court act, as added by chapter 122 of the laws of 1987, is amended to read as follows:

1. the claimant's right to payment [within thirty days following the debtor's receipt of the judgment notice] upon entry of judgment by the court clerk;

§2. Section 1811-A of the New York city civil court act, as amended by chapter 100 of the laws of 1998, is amended to read as follows:

§1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of the following actions:

1. garnishment of wage;

2. garnishment of bank account;

3. a lien on personal property;

4. seizure and sale of real property;

5. seizure and sale of personal property, including automobiles;

6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

7. revocation, suspension, or denial of renewal of any applicable business license or

permit;

8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

(b) Notice of judgment sent to a judgment creditor shall contain but not be limited to the following information:

1. the claimant's right to payment upon entry of judgment by the court clerk;

2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;

3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;

4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

5. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;

6. a statement that upon satisfying the judgment, the judgment debtor shall present appropriate proof thereof to the court; and

7. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) Notice of judgment sent to each party shall include the following statement: "An appeal from this judgment must be taken no later than the earliest of the following dates: (i)

thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

(d) All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§3. Paragraph 1 of subdivision (b) of section 1811 of the uniform district court act, as added by chapter 122 of the laws of 1987, is amended to read as follows:

1. the claimant's right to payment [within thirty days following the debtor's receipt of the judgment notice] upon entry of judgment by the court clerk;

§4. Section 1811-A of the uniform district court act, as amended by chapter 100 of the laws of 1998, is amended to read as follows:

§1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of the following actions:

1. garnishment of wage;

2. garnishment of bank account;

3. a lien on personal property;

4. seizure and sale of real property;

5. seizure and sale of personal property, including automobiles;

6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

7. revocation, suspension, or denial of renewal of any applicable business license or permit;

8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

(b) Notice of judgment sent to a judgment creditor shall contain but not be limited to the following information:

1. the claimant’s right to payment upon entry of judgment by the court clerk;

2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;

3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;

4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

5. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;

6. a statement that upon satisfying the judgment, the judgment debtor shall present

appropriate proof thereof to the court; and

7. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) Notice of judgment sent to each party shall include the following statement: "An appeal from this judgment must be taken no later than the earliest of the following dates: (i) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

(d) All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§5. Paragraph 1 of subdivision (b) of section 1811 of the uniform city court act, as added by chapter 122 of the laws of 1987, is amended to read as follows:

1. the claimant's right to payment [within thirty days following the debtor's receipt of the judgment notice] upon entry of judgment by the court clerk;

§6. Section 1811-A of the uniform city court act, as amended by chapter 100 of the laws of 1998, is amended to read as follows:

§1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall

specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of the following actions:

1. garnishment of wage;

2. garnishment of bank account;

3. a lien on personal property;

4. seizure and sale of real property;

5. seizure and sale of personal property, including automobiles;

6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

7. revocation, suspension, or denial of renewal of any applicable business license or permit;

8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

(b) Notice of judgment sent to a judgment creditor shall contain but not be limited to the following information:

1. the claimant’s right to payment upon entry of judgment by the court clerk;

2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;

3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;

4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on defendant's

ownership or operation of a motor vehicle;

5. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;

6. a statement that upon satisfying the judgment, the judgment debtor shall present appropriate proof thereof to the court; and

7. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) Notice of judgment sent to each party shall include the following statement: "An appeal from this judgment must be taken no later than the earliest of the following dates: (i) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

(d) All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§7. Paragraph 1 of subdivision (b) of section 1811 of the uniform justice court act, as added by chapter 122 of the laws of 1987, is amended to read as follows:

1. the claimant's right to payment [within thirty days following the debtor's receipt of

the judgment notice] upon entry of the judgment by the court clerk;

§8. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all notices of judgment sent on and after such effective date.

5. Orders of Recognizance or Bail by a Local Criminal Court When an Action is Pending Therein
(CPL §530.20)

This measure would amend section 530.20 of the Criminal Procedure Law to authorize a local criminal court to set bail for a defendant charged with certain class E felonies without first consulting with the District Attorney.

Under current law, a local criminal court cannot order recognizance or bail with respect to a defendant charged with a felony without first consulting with the District Attorney and, except in certain limited circumstances, obtaining a criminal history or prior arrest record for the defendant.[1] In contrast, when a defendant is arrested without a warrant for committing the same E felonies, a desk officer or other superior officer at a police station may fix pre-arraignment bail and, if the bail is posted, serve the arrested person with an appearance ticket and release the person from custody. Such officer is not required to consult with the District Attorney or to obtain a criminal history or prior arrest record before fixing pre-arraignment bail.

With the authority supplied by this measure, a local criminal court can complete an arraignment expeditiously. In addition, the court can make an informed and reasoned decision about the propriety of releasing a defendant on bail after reviewing the defendant's criminal history or prior arrest record. No such review is required before a police official can release a defendant on pre-arraignment bail.

Proposal

AN ACT to amend the criminal procedure law, in relation to orders of recognizance or bail by a local criminal court when an action is pending therein

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

Section 1. Subparagraph (i) of paragraph (b) of subdivision 2 of section 530.20 of the criminal procedure law is amended to read as follows:

(i) The district attorney has been heard in the matter or, after knowledge or notice of the

[1]Section 530.20(2)(a) prohibits a city, town or village court from ordering recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two previous felony convictions. Section 530.20(2)(b) prohibits a local criminal court from ordering recognizance or bail without first affording the District Attorney an opportunity to be heard and obtaining the defendant's criminal history or prior arrest record. The criminal history or prior arrest record, however, may be dispensed with under certain circumstances.

application and reasonable opportunity to be heard, has failed to appear at the proceeding or has otherwise waived his or her right to do so; provided however, this subparagraph shall not apply when a defendant is charged with a class E felony other than a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law; and

§2. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all orders of recognizance or bail made on or after such effective date.

6. Removal of Certain Criminal Cases
(CPL §180.25)

This measure would add a new section 180.25 to the Criminal Procedure Law to allow a superior court to remove a felony action from a local criminal court to expedite a defendant's plea to the felony charge.

Under current law, a criminal defendant charged in a local criminal court with the commission of a felony may waive his or her right to a preliminary hearing. Upon such waiver, the local criminal court must transfer the criminal action to the superior court. In many cases, such a waiver is made by a defendant because he or she intends to plead guilty to the offense charged. In such cases, the defendant must return to the local criminal court to waive the preliminary hearing and then must appear in the superior court to waive indictment and plead guilty to a superior court information. This measure would authorize a superior court judge to remove a felony action from a local criminal court following a defendant's arraignment, but prior to the defendant's waiver of a preliminary hearing, when the superior court finds that such removal will promote the administration of justice. The superior court then would have the same powers with respect to the disposition of the felony complaint as did the local criminal court from which it was removed, including accepting the defendant's waiver of a preliminary hearing.

This measure will allow speedy disposition of those felony cases in which the defendant and the prosecutor have reached a plea bargain agreement, particularly when the defendant will be referred to a specialized court such as a drug court or a domestic violence court immediately following arraignment in a local criminal court. In addition, this new procedure will ensure the most efficient use of resources in the local criminal courts.

Proposal

AN ACT to amend the criminal procedure law, in relation to removal of certain criminal cases

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

Section 1. The criminal procedure law is amended by adding a new section 180.25 to read as follows:

§180.25. Proceedings upon felony complaint; removal of action from local criminal court by superior court. Following defendant's arraignment before a local criminal court upon a felony complaint, but prior to waiver by the defendant of a hearing upon such felony complaint,

a superior court of the county in which the local criminal court is located may order that the action be removed to such superior court from such local criminal court provided it finds that such removal will promote the administration of justice. Upon such removal, the superior court may exercise all powers with respect to such felony complaint as might have been exercised by the local criminal court from which it was removed, except that, where the defendant does not waive a hearing upon the felony complaint, the superior court shall order that the action be removed back to the local criminal court in which it was commenced for further proceedings in accordance with this article.

§2. This act shall take effect immediately.

7. Single Judge Trials in Certain Misdemeanor Cases
(CPL §340.40(2))

Section 340.40(2) of the Criminal Procedure Law ("CPL") now provides that a defendant charged by information with a misdemeanor must be accorded a jury trial, except that, in the New York City Criminal Court ("NYC Criminal Court"), a defendant must be accorded a single judge trial where the authorized term of imprisonment for the charged misdemeanor is not more than six months.

First, this measure would extend the exception now applicable only in the NYC Criminal Court to apply as well in the District Courts of Nassau and Suffolk Counties and in the City Courts of Buffalo, Rochester, Syracuse and Yonkers. Thus, in these latter courts, trials of B misdemeanors would be nonjury trials only — as now is the case in the NYC Criminal Court. Second, this measure would provide that where a criminal defendant is charged in any of these courts with a misdemeanor punishable by a term of imprisonment of more than six months, and the court, upon application of the People, declares on the record that if the defendant is convicted after trial he or she will not be sentenced to a term of imprisonment of more than six months, the trial of the information must be a single judge trial. The proposal further requires that the court's declaration be made "not later than forty-five days after defendant's arraignment." The measure also makes corresponding amendments to Penal Law section 70.15 to preclude the imposition of a sentence of imprisonment of more than six months following a single judge trial under CPL section 340.40(2).

Last year, each judge sitting in the New York City Criminal Court handled, on average, nearly 5,000 cases. In recent years, that Court has had a more than forty percent increase in its filings. With calendars that large, and with no new influx of criminal court judges to handle its growing caseload, the Court has been reduced to what some have called a "plea bargain mill," a system where the pressure of case volume, rather than the merits of a particular case, often becomes the driving force. The accused, as well as the public in general, must know that the system is capable of adjudicating each and every criminal case on its merits by providing a swift and certain trial of criminal charges.

This measure would help to achieve this goal by enlarging misdemeanor trial capacity in the New York City Criminal Courts. Under the Constitution, a defendant's right to a jury trial attaches only when charged with a crime for which the maximum penalty is more than six months' incarceration. *See Baldwin v. New York*, 399 U.S. 66 (1970). This measure would permit a Court, upon motion of the District Attorney, to declare that, should there be a conviction on the misdemeanor charge after trial, the sentence will be within this Constitutional six-month "ceiling," thereby allowing the prosecution to proceed by way of a single judge trial. This, in turn, will free up limited judicial and prosecutorial resources for jury trials in cases where imposition of a sentence in excess of six months would be warranted.

Although to a somewhat lesser degree than in New York City, major local criminal courts outside the City suffer for a want of misdemeanor trial capacity. The Legislature has acknowledged this in the past and sought its correction *See* L. 1984, c. 673 [enacting the original misdemeanor trial law and applying it to Buffalo, Rochester, Syracuse and Yonkers along with New York City]. The instant measure recognizes that a problem yet remains, and offers a cure modeled after the New York City approach.

This measure would have no fiscal impact on the public treasury, although it should meaningfully enhance trial capacity in the seven affected courts without need of an infusion of new resources.

Proposal

AN ACT to amend the criminal procedure law, in relation to trial in certain local criminal courts

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

Section 1. Subdivision 2 of section 340.40 of the criminal procedure law, as amended by chapter 673 of the laws of 1984, is amended to read as follows:

2. In any local criminal court a defendant who has entered a plea of not guilty to an information which charges a misdemeanor must be accorded a jury trial, conducted pursuant to article three hundred sixty, except that in the New York city criminal court, in the district courts, and in the local criminal courts of those cities with a population of one hundred fifty thousand or more each of the following must be a single judge trial:

(a) the trial of an information which charges a misdemeanor for which the authorized term of imprisonment is not more than six months [must be a single judge trial]; and

(b) the trial of an information which charges a misdemeanor for which the authorized term of imprisonment is more than six months where, on request of the people, the court, not later than forty-five days after defendant's arraignment, declares on the record its commitment

that, should defendant be convicted after trial, he or she will not be sentenced to a term of imprisonment of more than six months.

§2. Subdivisions 1 and 3 of section 70.15 of the penal law, subdivision 1 as amended by chapter 291 of the laws of 1993, are amended to read as follows:

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime. Notwithstanding the foregoing, where the defendant is convicted of a class A misdemeanor following a single judge trial in a local criminal court as required by paragraph (b) of subdivision two of section 340.40 of the criminal procedure law, he or she may not be sentenced thereon to a term of imprisonment exceeding six months.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and, except as otherwise provided herein, shall be in accordance with the sentence specified in the law or ordinance that defines the crime. Where a defendant is convicted in a local criminal court of an unclassified misdemeanor that, under the law or ordinance that defines the crime, is punishable by a term of imprisonment in excess of six months, following a single judge trial as required by paragraph (b) of subdivision two of section 340.40 of the criminal procedure law, he or she may not be sentenced thereon to a term of imprisonment exceeding six months.

§3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law and shall apply to all actions and proceedings commenced on or after such effective date; provided, however, this act shall expire on the first day of November in the third year next succeeding such effective date at which time the provisions of law amended by this act shall be those existing without such amendments.

8. Using Credit Cards to Pay Fines, Crime Victim Assistance Fees and Mandatory Surcharges
(CPL §420.05)

This measure would amend section 420.05 of the Criminal Procedure Law to clarify that criminal courts may accept credit cards and other similar devices as payment for fines, crime victim assistance fees and mandatory surcharges.

Under current law, which was enacted in 1987, a criminal court can accept payment of fines and bail by credit card or similar device only when the offense involved is a traffic infraction. Since 1987, the use of credit cards and debit cards has increased dramatically throughout the general population. In addition, many government entities now accept credit cards for payment of taxes, fees and other monies payable by their respective constituents. This includes New York State, which, pursuant to its Electronic Value Transfer Program established by section 4-a of the New York State Finance Law, now permits state agencies to collect taxes, fees and other monies by credit card. Finally, the Unified Court System is implementing several pilot projects for paying filing fees by credit card as an adjunct to filing legal documents electronically and by facsimile. The use of credit cards in criminal courts is particularly appropriate as these courts collect large sums of money in fines, crime victim assistance fees and mandatory surcharges. Credit cards will improve the rate of collection of these fines and fees and will promote a more efficient use of court resources. This measure also would make a conforming amendment to section 212(2)(j) of the Judiciary Law, which empowers the Chief Administrative Judge to establish a system for the payment of certain court-related obligations by credit card.

Proposal

AN ACT to amend the criminal procedure law and the judiciary law, in relation to paying mandatory surcharges and crime victim assistance fees by credit card

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

Section 1. Section 420.05 of the criminal procedure law, as added by chapter 805 of the laws of 1987, is amended to read as follows:

§420.05. Payment of fines, mandatory surcharges and crime victim assistance fees by credit card. When the court imposes a fine, a mandatory surcharge or a crime victim assistance fee upon an individual who stands convicted of [a violation under the vehicle and traffic law]

any offense, such individual may pay such fine, mandatory surcharge or crime victim assistance fee by credit card or similar device. In such event, notwithstanding any other provision of law, he or she also may be required to pay a reasonable administrative fee. The amount of such fee and the time and manner of its payment shall be in accordance with the system established by the chief administrator of the courts pursuant to paragraph [(i)](j) of subdivision two of section two hundred twelve of the judiciary law.

§2. Paragraph (j) of subdivision 2 of section 212 of the judiciary law, as amended by chapter 367 of the laws of 1997, is amended to read as follows:

(j) Notwithstanding any provision of law, rule or regulation to the contrary, establish a system for the posting of bail in court and the payment of fines, mandatory surcharges, crime victim assistance fees and court fees by credit card or similar device. In establishing such system, the chief administrator shall seek the assistance of the state comptroller who shall assist in developing such system so as to ensure that such funds shall be returned to any jurisdiction which, by law, may be entitled to them. The chief administrator shall periodically accord the head of each police department or police force and of any state department, agency, board, commission or public authority having police officers who fix pre-arraignment bail pursuant to section 150.30 of the criminal procedure law an opportunity to have the system established pursuant to this paragraph apply to the posting of pre-arraignment bail with police officers under his or her jurisdiction.

§3. Paragraph (j) of subdivision 2 of section 212 of the judiciary law, set out second, is amended to read as follows:

(j) Notwithstanding any provision of law, rule or regulation to the contrary, establish a

system for the posting of bail in court and the payment of fines, mandatory surcharges and crime victim assistance fees by credit card or similar device. In establishing such system, the chief administrator shall seek the assistance of the state comptroller who shall assist in developing such system so as to ensure that such funds shall be returned to the jurisdiction which, by law, is entitled to them. The chief administrator shall periodically accord the head of each police department or police force and of any state department, agency, board, commission or public authority having police officers who fix pre-arraignment bail pursuant to section 150.30 of the criminal procedure law an opportunity to have the system established pursuant to this paragraph apply to the posting of pre-arraignment bail with police officers under his or her jurisdiction.

§4. This act shall take effect immediately, except that the provisions of section 3 of this act shall not take effect unless and until the provisions of paragraph (j) of subdivision 2 of section 212 of the judiciary law, as amended by chapter 367 of the laws of 1999 and section 2 of this act, shall have expired.

9. Notice Required to Obtain a Default Judgment for Failure to Answer an Accusatory Instrument Charging a Traffic Infraction
(VTL §1806-a)

This measure would amend section 1806-a of the Vehicle and Traffic Law to authorize a court to use regular first class mail to notify a defendant who fails to answer a notice of appearance, a summons or some other notice of violation charging the defendant with a traffic infraction involving parking, stopping, or standing.

Section 1806-a authorizes courts having jurisdiction of traffic infractions to enter a default judgment against a defendant who fails to answer the accusatory instrument charging the offense. Before doing so, however, the court must give the defendant 30 days' notice of the impending default judgment by *certified* mail. This measure amends section 1806-a to allow such notice to be given by regular first class mail when a defendant fails to answer a charge involving parking, stopping or standing offenses and certain conditions are met. Specifically, the defendant must have been served personally with an appearance ticket, a summons or some other notice of violation and with notice that if the defendant fails to answer the charge, the court may enter a plea of guilty on the defendant's behalf and impose a fine that is authorized by law. With respect to parking, stopping or standing offenses, personal service would include posting the notice or summons by affixing it to a conspicuous place on the motor vehicle involved. Proof of such personal service must be filed with the court. This notice procedure is consistent with that set forth in CPLR 3215 for default judgments entered in civil cases.

Enactment of this measure will greatly reduce mailing costs incurred by courts that handle a large number of parking, stopping or standing offenses.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to default judgment for failure to answer an accusatory instrument charging a traffic infraction

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

Section 1. Subdivision 1 of section 1806-a of the vehicle and traffic law is amended to read as follows:

1. (a) In the event a person charged with a traffic infraction does not answer within the time specified, the court having jurisdiction, other than a court in a city having a population of

over one million [population] may, in addition to any other action authorized by law, enter a plea of guilty on behalf of the defendant and render a default judgment of a fine determined by the court within the amount authorized by law. Any judgment entered pursuant to default shall be civil in nature, but shall be treated as a conviction for the purposes of this section. However, at least thirty days after the expiration of the original date prescribed for entering a plea and before a plea of guilty and a default judgment may be rendered, the traffic violations bureau or, if there be none, the clerk of the court, shall notify the defendant by certified mail at defendant's last known place of residence: [(a)] (i) of the violation charged; [(b)] (ii) of the impending plea of guilty and default judgment; [(c)] (iii) that such judgment will be filed with the county clerk of the county in which the operator or registrant is located[,]; and [(d)] (iv) that a default or plea of guilty may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered within that period shall be in a manner prescribed in the notice.

(b) Notwithstanding any provision of paragraph (a) of this subdivision, where defendant is charged with a traffic infraction involving parking, stopping or standing under this chapter or under an ordinance, rule or regulation adopted pursuant to this chapter, the notice required by paragraph (a) may be sent by regular first class mail to defendant's last known place of residence, provided: (i) the defendant was served, either by personal delivery to him or her or by affixation upon the motor vehicle involved, with an appearance ticket, a summons or other notice of the violation describing the traffic infraction charged, together with written notice that in the event the defendant does not appear and answer the charge within the time specified in such appearance ticket, summons or other notice of the violation, the court will enter a plea of guilty

on behalf of the defendant and render a default judgment of a fine determined by the court within the amount authorized by law; and (ii) proof of service thereof, in a form prescribed by section three hundred six of the civil practice law and rules, is filed with the court.

(c) In no case shall a default judgment and plea of guilty pursuant to this section be rendered more than two years after the expiration of the time prescribed for originally entering a plea. When a person has entered a plea of not guilty and has demanded a hearing, no fine or penalty shall be imposed for any reason, prior to the holding of the hearing which shall be scheduled by the court of such city, village or town within thirty days of such demand.

§2. This act shall take effect thirty days after it becomes a law and shall apply to all traffic infractions committed on or after such effective date.

10. Guilty Pleas to Superior Court Informations in Local Criminal Courts Following Waiver of Indictment (CPL §§10.20(1)(a),10.30(1) and 195.30)

Under current law, a criminal defendant who is charged in a local criminal court with commission of a felony may opt to waive indictment and consent to be prosecuted by a superior court information. The latter is a written accusation by the district attorney that charges the defendant with commission of one or more crimes.

While a defendant may be tried on a superior court information, more often it is the case that defendants consent to prosecution thereby as part of a plea agreement. That is, a defendant who is charged by felony complaint with commission of a serious felony agrees to plead guilty to a lesser felony before the matter can be brought before the grand jury and the defendant is indicted. Under these circumstances, defendant waives prosecution by indictment, consents to prosecution on the agreed-upon charge by superior court information filed with a superior court, and appears before a superior court judge for purposes of formally entering the plea and being sentenced.

To economize in the use of resources, in New York City the courts have established special parts (referred to as "SCI" Parts) in which New York City Criminal Court Judges sit first as local criminal court judges, to preside over preliminary proceedings involving felony charges against a defendant, and then as Acting Supreme Court Justices, to take guilty pleas to superior court informations following defendants' waivers of indictment. Similarly, District Courts in Suffolk County have special parts for the same purpose, in which District Court Judges sit first as local criminal court judges and then as acting County Court Judges. In both courts, while the Justices and Judges are sitting in their "acting" capacities, their courts technically become superior courts, which necessitates a variety of costly administrative steps (including introduction of additional court personnel during the proceedings, and use of regularly-designated Acting Justices of the Supreme Court and Acting County Court Judges — Justices and Judges who, but for such assignments, could otherwise be presiding over jury trials in more serious cases).

City Courts outside New York City do not operate special parts for handling felony charges. Rather, if a defendant charged with a felony waives prosecution by indictment and consents to prosecution by a superior court information for the purpose of entering a plea to a reduced felony charge, the case then must be sent to the County Court for disposition. This is because, until recently, City Court judges could not be assigned to superior courts. Now, because of the voters' recent approval of a constitutional amendment permitting certain City Court judges to sit temporarily on County Court, that disability no longer exists.

The steps that must be taken in each of these courts can be saved by some simple amendments to the Criminal Procedure Law. At the present time, that statute requires that a superior court information be filed with a superior court, which means with either Supreme Court or County Court. By amendment to sections 10.20 and 10.30, and provisions of Articles

195 and 200, the statute can authorize the filing of a superior court information in New York City's local criminal court (*i.e.,* the NYC Criminal Court), District Courts and City Courts, and permit those courts to accept a plea to that instrument (and sentence defendant thereon)[2]. By doing this, it would be possible to have regular Criminal Court Judges preside over the SCI Parts in the New York City Criminal Court, rather than Acting Justices of the Supreme Court, and to have regular District Court Judges preside over special felony parts rather than Acting County Court Judges. And, felony cases begun in City Courts can be disposed without involving County Courts. This is a better use of judicial resources, and it spares the State the costs of converting local criminal courts into superior courts, and transferring cases to superior courts, to avoid an artificial and unjustifiable jurisdictional obstacle. This is the purpose of this measure.

Proposal

AN ACT to amend the criminal procedure law, in relation to superior court informations

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

Section 1. Paragraph (a) of subdivision 1 of section 10.20 of the criminal procedure law is amended to read as follows:

(a) [Exclusive] Except as otherwise provided in subdivision one of section 10.30, exclusive trial jurisdiction of felonies; and

§2. Subdivision 1 of section 10.30 of the criminal procedure law is amended to read as follows:

1. Local criminal courts have trial jurisdiction of all offenses other than felonies. They have:

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[2]Permitting a local criminal court to receive defendant's plea to a felony and to impose sentence does not violate the Constitution. Section 7 of Article 6 provides that "[i]n the city of New York, [Supreme Court] shall have exclusive jurisdiction over crimes prosecuted by *indictment* . . ." (emphasis supplied). It does not, however, give Supreme Court a similar corner on crimes prosecuted by information. At the same time, section 15(c) of Article 6 gives the NYC Criminal Court "jurisdiction over crimes and other violations of law, *other than those prosecuted by indictment*, . . ." (emphasis supplied); and Sections 16(d) and 17(a) give the District Court and upstate City Courts, respectively, such jurisdiction as the Legislature provides (so long as it is not greater than that of the New York City Civil and Criminal Courts).

(a) Exclusive trial jurisdiction of petty offenses except for the superior court jurisdiction thereof prescribed in paragraph (c) of subdivision one of section 10.20; and

(b) Trial jurisdiction of misdemeanors concurrent with that of the superior courts but subject to divestiture thereof by the latter in any particular case.

Notwithstanding the foregoing, the New York city criminal court, a district court and a city court have jurisdiction to accept a plea of guilty to a superior court information filed therein and to sentence defendant thereon, as provided in subdivision two of section 195.40.

§3. Section 195.30 of the criminal procedure law, as added by chapter 467 of the laws of 1974, is amended to read as follows:

§195.30. Waiver of indictment; approval of waiver by the court. The court shall determine whether the waiver of indictment complies with the provisions of sections 195.10 and 195.20. If satisfied that the waiver complies with such provisions, the court shall approve the waiver and execute a written order to that effect. When the waiver is approved by a local criminal court, the local criminal court shall promptly transmit to the appropriate superior court the written waiver and order approving the waiver, along with all other documents pertinent to the action unless the defendant has consented to enter a plea of guilty to a superior court information to be filed in the New York city criminal court, a district court, or a city court, as provided in subdivision two of section 195.40. Until such papers are received by the superior court, the action is deemed to be pending in the local criminal court.

§4. Section 195.40 of the criminal procedure law, as added by chapter 467 of the laws of 1974, is amended to read as follows:

§195.40. Waiver of indictment; filing of superior court information. 1. When

indictment is waived in a superior court the district attorney shall file a superior court information in such court at the time the waiver is executed. When indictment is waived in a local criminal court the district attorney shall file a superior court information in the appropriate superior court within ten days of the execution of the court order approving the waiver. Upon application of a defendant whose waiver of indictment has been approved by the court, and who, at the time of such approval or subsequent thereto, has been committed to the custody of the sheriff pending disposition of the action, and who has been confined in such custody for a period of more than ten days from the date of approval without the filing by the district attorney of a superior court information, the superior court must release [him] such defendant on his or her own recognizance unless:

(a) The failure of the district attorney to file a superior court information during such period of confinement was due to defendant's request, action or condition or occurred with his or her consent; or

(b) The people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded the filing of the superior court information within the prescribed period.

2. Notwithstanding the provisions of subdivision one of this section, when a defendant waives indictment in the New York city criminal court, a district court or a city court, the district attorney may file a superior court information in such court. In such event, the criminal court shall have the same jurisdiction to accept a plea of guilty thereto and to sentence defendant thereon as a superior court.

§5. Section 200.15 of the criminal procedure law, as added by chapter 467 of the laws of

1974, is amended to read as follows:

§200.15. Superior court information; definition. A superior court information is a written accusation by a district attorney filed in a [superior] court pursuant to article one hundred ninety-five, charging a person, or two or more persons jointly, with the commission of a crime, or with the commission of two or more offenses, at least one of which is a crime. A superior court information may include any offense for which the defendant was held for action of a grand jury and any offense or offenses properly joinable therewith pursuant to sections 200.20 and 200.40, but shall not include an offense not named in the written waiver of indictment executed pursuant to section 195.20. A superior court information has the same force and effect as an indictment and all procedures and provisions of law applicable to indictments are also applicable to superior court informations, except where otherwise expressly provided.

§6. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

11. Supporting Depositions for Defendants Charged by Simplified Information with a Misdemeanor
(CPL §§100.20 and 100.25)

This measure would amend sections 100.20 and 100.25 of the Criminal Procedure Law (CPL) to entitle a defendant charged by simplified information with a misdemeanor to a supporting deposition that contains non-hearsay allegations which establish, if true, every element of the offense charged and the defendant's commission thereof.

A simplified information is a short form accusatory instrument created for use by law enforcement personnel to streamline the process of charging persons with traffic infractions, misdemeanors relating to traffic and non-felony offenses defined in the Environmental Conservation Law and the Parks, Recreation and Historic Preservation Law. Unless a defendant requests a supporting deposition pursuant to section 100.25 of the CPL, a simplified information is legally sufficient and can serve as the basis for prosecution of the charge contained therein, without any supporting factual allegations. And, even if a defendant requests a supporting deposition, it need only contain allegations of fact based only upon the information and belief of the complainant police officer or public servant. A defendant charged by simplified information with a misdemeanor, therefore, can be prosecuted based solely on hearsay allegations. In contrast, a defendant charged by "long form" information with a misdemeanor is entitled to an accusatory instrument that includes allegations of fact that provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the information and non-hearsay allegations that establish, if true, every element of the offense charged and the defendant's commission thereof. [CPL §100.40(b) and (c)]. A "long form" information that does not contain such allegations of fact is subject to dismissal as defective pursuant to sections 170.30 and 170.35 of the CPL.

Under the present statutory scheme, two defendants who are charged with the same misdemeanor offense are entitled to different procedural safeguards depending on the type of accusatory instrument used to charge the offense. This distinction exists even though both defendants are subject to the same sentencing provisions and both, upon conviction, are guilty of a crime. This measure will ensure that all such defendants are afforded the same supporting deposition prior to trial.

Proposal

AN ACT to amend the criminal procedure law, in relation to a defendant's right to a supporting deposition

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

Section 1. Section 100.20 of the criminal procedure law, as amended by chapter 661 of the laws of 1972, is amended to read as follows:

§100.20. Supporting deposition; definition, form and content. [A] Except as otherwise provided in section 100.25, a supporting deposition is a written instrument accompanying or filed in connection with an information, a simplified information, a misdemeanor complaint or a felony complaint, subscribed and verified by a person other than the complainant of such accusatory instrument, and containing factual allegations of an evidentiary character, based either upon personal knowledge or upon information and belief, which supplement those of the accusatory instrument and support or tend to support the charge or charges contained therein.

§2. Subdivision 2 of section 100.25 of the criminal procedure law, as amended by chapter 67 of the laws of 1996, is amended to read as follows:

2. A defendant charged by a simplified information is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him or her, or if [he] the defendant is represented by an attorney, upon his or her attorney, a supporting deposition of the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged. A defendant charged by simplified information with a misdemeanor is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him or her, or if the defendant is represented by an attorney, upon his or her attorney, one or more supporting depositions by the complainant police officer or public servant and/or by a person other than the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and

belief, providing reasonable cause to believe that the defendant committed the offense charged and containing non-hearsay allegations which establish, if true, every element of the offense charged and the defendant's commission thereof. To be timely, such a request must, except as otherwise provided herein and in subdivision three of this section, be made before entry of a plea of guilty to the charge specified and before commencement of a trial thereon, but not later than thirty days after the date the defendant is directed to appear in court as such date appears upon the simplified information and upon the appearance ticket issued pursuant thereto. If the defendant's request is mailed to the court, the request must be mailed within such thirty day period. Upon such a request, the court must order the complainant police officer or public servant to serve a copy of such supporting deposition upon the defendant or [his] the defendant's attorney, within thirty days of the date such request is received by the court, or at least five days before trial, whichever is earlier, and to file such supporting deposition with the court together with proof of service thereof. Notwithstanding any provision to the contrary, where a defendant is issued an appearance ticket in conjunction with the offense charged in the simplified information and the appearance ticket fails to conform with the requirements of subdivision two of section 150.10, a request is timely when made not later than thirty days after (a) entry of the defendant's plea of not guilty when he or she has been arraigned in person, or (b) written notice to the defendant of his or her right to receive a supporting deposition when a plea of not guilty has been submitted by mail.

§3. This act shall take effect on the thirtieth day next succeeding the date on which it shall have become a law.

12. Entry of Default Judgments by a Traffic and Parking Violations Agency (VTL §1806-a(4))

This measure would amend subdivision 4 of section 1806-a of the Vehicle and Traffic Law to authorize a traffic and parking violations agency to enter default judgments for failure to answer a traffic infraction as well as a parking violation.

Subdivision 4 currently authorizes a traffic and parking violations agency to enter a default judgment when a person charged with a parking violation fails to answer within the time specified. This measure would expand the authority of such an agency also to allow entry of a default judgment when a person charged with a traffic infraction fails to answer within the time specified.

The Nassau County Traffic and Parking Violations Agency was created to assist the Nassau County District Court in the disposition and administration of certain infractions of traffic and parking laws, ordinances, rules and regulations. The assistance rendered by the agency includes issuing default judgments when defendants fail to appear. To limit the agency's authority to issue default judgments to only one class of cases over which it has jurisdiction is inconsistent with its purpose and renders it unable to dispose of more serious offenses.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to entry of default judgments by a traffic and parking violations agency

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

Section 1. Subdivision 4 of section 1806-a of the vehicle and traffic law, as added by chapter 496 of the laws of 1990, is amended to read as follows:

4. In the event a person charged with a traffic infraction or a parking violation does not answer within the time specified, a traffic and parking violations agency may, in addition to any other action authorized by law, enter a plea of guilty on behalf of the defendant and render a default judgment of a fine determined by the judicial hearing officer within the amount authorized by law. Any judgment entered pursuant to default shall be civil in nature, but shall be

treated as a conviction for the purposes of this section. However, at least thirty days after the expiration of the original date prescribed for entering a plea and before a plea of guilty and a default judgment may be rendered, the traffic and parking violations agency shall notify the defendant by certified mail: (a) of the violation charged; (b) of the impending plea of guilty and default judgment; (c) that such judgment will be filed with the county clerk of the county in which the operator or registrant is located, and (d) that a default or plea of guilty may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered within that period shall be in a manner prescribed in the notice. In no case shall a default judgment and plea of guilty be rendered more than two years after the expiration of the time prescribed for originally entering a plea. When a person has entered a plea of not guilty and has demanded a hearing, no fine or penalty shall be imposed for any reason, prior to the holding of the hearing which shall be scheduled by the traffic and parking violations agency within thirty days of such demand.

§2. This act shall take effect immediately.

13. Filing Fees for Commencing Commercial Claims (NYCCCA §1803-A(a),(b); UCCA §1803-A(a), (b); and, UDCCA §1803-A(a),(b))

This measure would amend section 1803-A of the New York City Civil Court Act, the Uniform City Court Act, and the Uniform District Court Act to make it consistent with the filing fee provisions for regular small claims by creating a two-tiered filing fee based on the amount of the claim and by eliminating the requirement that a claimant pay the cost of mailings when commencing a commercial claim.

Upon enactment of chapter 309 of the Laws of 1996, the provisions of the uniform court acts governing filings of small claims were amended to increase the filing fees and to delete language requiring individuals filing small claims to pay the costs of mailing a notice of small claim. Through inadvertence, the parallel provisions governing filings of commercial claims were not also amended. This measure, therefore, in keeping with the intent to make uniform the practice and procedures in local courts, would conform the statutory provisions governing commercial claims with those governing small claims.

Proposal

AN ACT to amend the New York city civil court act, the uniform city court act and the uniform district court act, in relation to commencing a commercial claim

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

Section 1. The first unnumbered paragraph of subdivision (a) of section 1803-A of the New York city civil court act, as amended by chapter 90 of the laws of 1996, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and twenty-five dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other

than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a required statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the city of New York, and his or her residence is known to the claimant, or at his or her office or place of regular employment within the city of New York if he or she does not reside therein or his or her residence within the city of New York is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim pursuant to subdivision (d) of this section.

§2. The first unnumbered paragraph of subdivision (b) of section 1803-A of the New York city civil court act, as amended by chapter 347 of the laws of 1995, is amended to read as follows:

Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars [and the cost of mailings as

herein provided] for claims in the amount of one thousand dollars or less and twenty-five dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf [of] to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

§3. The first unnumbered paragraph of subdivision (a) of section 1803-A of the uniform district court act, as amended by chapter 90 of the laws of 1996, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and twenty-five dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a filing system maintained especially for such purpose. Such procedure shall provide that the

commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the municipality in which the court is located, and his or her residence is known to the claimant, or at his or her office or place of regular employment within such municipality if he or she does not reside within such municipality or his or her residence within the municipality is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim, pursuant to subdivision (d) of this section.

§4. The first unnumbered paragraph of subdivision (b) of section 1803-A of the uniform district court act, as amended by chapter 90 of the laws of 1996, is amended to read as follows:

Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and twenty-five dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and

record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

§5. The first unnumbered paragraph of subdivision (a) of section 1803-A of the uniform city court act, as amended by chapter 90 of the laws of 1996, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and twenty-five dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the county in which the court is located, and his or her residence is known to the claimant, or at his or her office or place of regular employment within

such county if he or she does not reside therein or his or her residence within the county is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim pursuant to subdivision (d) of this section.

§6. The first unnumbered paragraph of subdivision (b) of section 1803-A of the uniform city court act, as amended by chapter 347 of the laws of 1995, is amended to read as follows:

Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and twenty-five dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

§7. This act shall take effect ten days after it shall have become a law and shall apply to all actions commenced on or after such date.

14. Recording the Answer of a Respondent in a Summary Proceeding (RPAPL §743)

This measure would amend section 743 of the Real Property Actions and Proceedings Law to permit the clerk or presiding judge or justice of a court to record the oral answer of a respondent in a summary proceeding on a record other than the petition.

Section 743 currently requires the clerk of a court to indorse the oral answer of a respondent in a summary proceeding upon the petition. This practice, however, is not always practical because there may be little room to enter additional information on a petition after it is filed. As a result, answers may be illegible and inaccurate. This amendment will afford the clerk or the presiding judge or justice of the court the option of recording a respondent's oral answer on a separate record.

Proposal

AN ACT to amend the real property actions and proceedings law, in relation to recording the answer of a respondent in a summary proceeding

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

Section 1. Section 743 of the real property actions and proceedings law, as amended by chapter 910 of the laws of 1965, is amended to read as follows:

§743. Answer. Except as provided in section 732, relating to a proceeding for non-payment of rent, at the time when the petition is to be heard the respondent, or any person in possession or claiming possession of the premises, may answer, orally or in writing. If the answer is oral the substance thereof shall be [indorsed upon the petition] recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record . If the notice of petition was served at least eight days before the time at which it was noticed to be heard and it so demands, the answer shall be made at least three days before the time the petition is noticed to be heard and, if in writing, it shall be served

within such time; whereupon any reply shall be served at least one day before such time. The answer may contain any legal or equitable defense, or counterclaim. The court may render affirmative judgment for the amount found due on the counterclaim.

§2. This act shall take effect immediately.

15. Warrants of Arrest Based on Simplified Informations
(CPL §120.20)

This measure would amend section 120.20 of the Criminal Procedure Law to preclude a criminal court from issuing a warrant of arrest based on any simplified information.

Section 120.20 currently excludes only simplified traffic informations from the class of accusatory instruments that can support issuance of an arrest warrant. As is noted by Professor Peter Preiser in the Practice Commentaries to section 120.20, the failure to exclude the other simplified informations (parks and environmental conservation) is most likely because they did not exist when the Criminal Procedure Law first was enacted. Failure to add the other simplified informations when they were created probably was an oversight. Nevertheless, these subsequently created simplified informations, like simplified traffic informations, do not establish the threshold reasonable cause necessary to justify issuance of a warrant of arrest and, therefore, should be excluded as well.

Proposal

AN ACT to amend the criminal procedure law, in relation to issuance of a warrant of arrest when a criminal action has been commenced in a local criminal court by the filing of a simplified information

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

Section 1. Subdivision 1 of section 120.20 of the criminal procedure law, as added by chapter 996 of the laws of 1970, is amended to read as follows:

1. When a criminal action has been commenced in a local criminal court by the filing therewith of an accusatory instrument, other than a simplified [traffic] information, against a defendant who has not been arraigned upon such accusatory instrument and has not come under the control of the court with respect thereto, such court may, if such accusatory instrument is sufficient on its face, issue a warrant for such defendant's arrest.

§2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

16. Grounds for Vacating Default Judgments Entered Pursuant to Vehicle and Traffic Law Section 1806-a (VTL §1806-a)

This measure would amend section 1806-a of the Vehicle and Traffic Law to authorize grounds for vacatur of a default judgment entered against a person charged with a traffic infraction.

Section 1806-a authorizes a court outside New York City having jurisdiction over traffic matters to enter a plea of guilty on behalf of a defendant charged with a traffic infraction and to render a default judgment of a fine within an amount authorized by law after the defendant fails to answer the charge within the time specified. The statute further provides that any such default judgment shall be civil in nature, but shall be treated as a conviction for purposes of the proceeding under the Vehicle and Traffic Law.

The civil nature of a default judgment entered pursuant to section 1806-a in the context of a criminal proceeding has caused confusion among courts and defendants who seek to vacate such judgments. Some defendants move pursuant to CPLR 5015, while others move pursuant to CPL 440.10. This amendment will dispel that confusion by providing a motion procedure specifically applicable to default judgments entered pursuant to section 1806-a of the Vehicle and Traffic Law.

The measure sets forth the two grounds that may be asserted to vacate the default: excusable default and failure to provide proper notice. To ensure ultimate finality of the proceeding, the measure further provides that a motion to vacate pursuant to this section must be made within one year after the defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to vacating a default judgment against a person charged with a traffic infraction

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

Section 1. Section 1806-a of the vehicle and traffic law is amended by adding a new subdivision 2-a to read as follows:

2-a. The court that entered a judgment pursuant to this section may, on motion by a

defendant, vacate such judgment upon the ground of:

(a) excusable default, if the motion is made within one year after the defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry, provided, however, that no defendant shall be required to establish a meritorious defense to prevail on a motion made pursuant to this paragraph; or

(b) failure by the traffic violations bureau or, if there be none, the clerk of the court, to comply with the notice requirements set forth in subdivision one of this section.

§2. This act shall take effect immediately.

17. Grounds for Vacating a Default Judgment Against a Corporate Defendant for Failure to Appear
(CPL §440.10)

This proposal would amend section 440.10 of the Criminal Procedure Law ("CPL") to authorize a court to entertain an application to vacate a plea of guilty and sentence imposed when a corporate defendant fails to appear. To ensure ultimate finality of the proceeding, a motion to vacate pursuant to this section must be made within one year after the defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry. None of the grounds currently set forth in section 440.10 for vacating a judgment in a criminal case specifically addresses a default judgment entered against a corporate defendant.

In almost all cases, when a criminal defendant fails to appear voluntarily to answer a charge, the court must take steps, such as issuing a warrant of arrest, to secure the defendant's appearance. The court cannot proceed to enter a guilty plea and sentence the non-appearing defendant. With respect to corporate defendants, however, section 600.20 of the CPL specifically authorizes the court to enter a plea of guilty and impose sentence in the event such a defendant fails to appear at the appointed time.

In some cases, a corporate defendant fails to appear simply because no notice of the proceeding was received prior to the appearance date. This problem arises because section 600.10 of the CPL authorizes service of a summons or an appearance ticket on the Secretary of State in addition to designated corporate officers. The Secretary of State then must promptly forward such process to the corporation at the address on file in the Department of State for that purpose. If the address on file for the corporation is not current, the corporation may not receive the process in time to appear and defend the criminal action.

A defaulting corporate defendant that fails to appear can be subject to significant fines. In one reported case, *People v Sage Realty, Inc.* (155 Misc 2d 832, 590 NYS 2d 660 [Cr Ct City of NY 1992]), the corporate defendant failed to appear and was sentenced to pay a $10,000 fine.

Section 440.10 of the CPL does not specifically address a motion to vacate a default judgment entered against a corporate defendant. In fact, both the prosecutor and the corporate defendant in *People v Sage Realty, Inc.*, relied on the law governing the reopening of default judgments in civil cases as controlling authority. While the court in that case found that the motion as made properly was phrased to state a constitutional claim, a ground recognized by CPL 440.10, this proposal will make it clear that motions by corporate defendants to vacate defaults under CPL 600.20 generally are cognizable by the court, will clarify the procedure to be followed by corporate defendants in making such motions and will fix time constraints on when the motion may be made.

The amendment also provides that no defendant making a motion to vacate a guilty plea and sentence is required to establish a meritorious defense to the criminal charge to prevail on the motion. While such a requirement is imposed when defendants seek to vacate a default

judgment in civil cases for excusable default, it is not appropriate in a criminal proceeding, where the burden of proof rests with the prosecution.

Proposal

AN ACT to amend the criminal procedure law, in relation to vacating a plea of guilty and sentence imposed by the court upon failure to appear by a corporate defendant

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

Section 1. Paragraph (h) of subdivision 1 of section 440.10 of the criminal procedure law is amended to read as follows:

(h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States[.] ; or

§2. Subdivision 1 of section 440.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(i) The judgment was entered by the court pursuant to section 600.20 upon failure to appear by a corporate defendant and such corporate defendant has established that such failure to appear was excusable. A motion pursuant to this paragraph must be made within one year after the corporate defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry; provided, however, no such motion may be made once the corporate defendant takes and perfects an appeal from the judgment. The corporate defendant shall not be required to establish a meritorious defense to prevail pursuant to this paragraph.

§3. Paragraph (b) of subdivision 2 of section 440.10 of the criminal procedure law is amended to read as follows:

(b) The judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal. This paragraph does not apply to a motion pursuant to paragraph (i) of subdivision one ; or

§4. Paragraph (c) of subdivision 2 of section 440.10 of the criminal procedure law, as added by chapter 996 of the laws of 1970, is amended to read as follows:

(c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his or her unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him or her. This paragraph does not apply to a motion pursuant to paragraph (i) of subdivision one; or

§5. This act shall take effect immediately.

18. Imposition of Mandatory Surcharges and Crime Victim Assistance Fees When a Defendant is Sentenced to Make Restitution or Reparation (PL §60.35(6))

This measure would amend subdivision 6 of section 60.35 of the Penal Law to clarify its provisions exempting defendants who have paid restitution or made reparations from having to pay a mandatory surcharge and a crime victim assistance fee. As amended, subdivision 6 would exempt outright only a defendant who pays restitution or makes reparation at or prior to sentencing. Defendants who are sentenced to pay restitution or make reparation, but who do not do so at sentencing, must pay a mandatory surcharge and a crime victim assistance fee; but they will be entitled thereafter to a refund once the restitution is paid or the reparation is made.

For some years, there was disagreement among the Departments of the Appellate Division with respect to whether a defendant who has not made restitution or reparation prior to sentencing and who is ordered to do so as part of the sentence imposed for conviction of an offense may at the same time be ordered to pay a mandatory surcharge and a crime victim assistance fee. The First and Third Departments had held that courts are prohibited from imposing a mandatory surcharge and a crime victim assistance fee when restitution or reparation is directed. *See People v Espola*, 238 AD2d 281 (1st Dept. 1997); *People v Allen*, 236 AD2d 653 (3rd Dept. 1997); *People v Meade*, 195 AD2d 756 (3rd Dept. 1993); *People v Moore*, 176 AD2d 968 (3rd Dept. 1991). The Second and Fourth Departments had held that both can be imposed simultaneously. A defendant who thereafter pays restitution or makes reparation can obtain a refund of the mandatory surcharge/crime victim assistance fee. *People v Cabrera*, 243 AD2d 720 (2nd Dept. 1997)].

In a recent decision, the Court of Appeals resolved these disagreements and held that section 65.35(6) of the Penal Law does permit a sentencing court to order both restitution and the mandatory surcharge/crime victim assistance fee when the defendant has not paid restitution or made reparation at the time of sentencing. *See People v Quinones*, 95 NY2d 349, (2000).

This measure would clarify section 65.35(6) so that it is consistent with the Court of Appeals' decision.

Proposal

AN ACT to amend the penal law, in relation to mandatory surcharges and crime victim assistance fees

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

Section 1. Subdivision 6 of section 60.35 of the penal law, as amended by chapter 62 of

the laws of 1989, is amended to read as follows:

6. Notwithstanding any other provision of this section, where [a person]:

(a) as of a person's sentencing, the court finds that he or she has made restitution or reparation [pursuant to section 60.27 of this chapter], such person shall not be required to pay a mandatory surcharge or a crime victim assistance fee; or

(b) following sentencing, a person makes restitution or reparation pursuant to section 60.27 of this article, such person may apply for resentence and, upon such application, the court shall revoke so much of the person's sentence as required payment of a mandatory surcharge and/or a crime victim assistance fee.

§2. This act shall take effect immediately and shall apply to all defendants sentenced on or after such effective date.

IV. MODIFIED LEGISLATION

1. Expanding Equity Jurisdiction in Local Courts Outside of New York City (UDCA §§203 and 209, UCCA §§203 and 209, MDL §§306 and 309)

This measure would amend sections 203 and 209 of the Uniform District Court Act and the Uniform City Court Act to provide District and City Courts, respectively, with additional equity jurisdiction so as to enhance their ability to handle landlord and tenant disputes outside New York City. It also would amend sections 306 and 309 of the Multiple Dwelling Law to add references to the fact that District and City Courts now will have jurisdiction to remove or remedy nuisances with respect to certain buildings.

Under the State Constitution, the New York City Civil Court may exercise such equity power as is granted to it by the State Legislature. The State's District Courts, too, may be granted equity powers, but not to exceed those given the Civil Court; and the upstate City Courts may be granted equity powers, but not to exceed those given the District Courts.[3]

At present, the Civil Court enjoys limited equity authority, one of the most important components of which being the power of its Housing Part to enforce compliance with community housing codes as an aspect of the Court's landlord and tenant jurisdiction. While the District Courts and the upstate City Courts also have general landlord and tenant jurisdiction, they do not, however, enjoy comparable equity powers. This lack of authority renders them far less effective as institutional means of preserving and protecting a community's housing stock. Moreover, it often requires parties to a landlord tenant dispute to go to several courts (*i.e.*, lower court for summary judgment determinations, Supreme Court for injunctive relief) to get complete relief. This is inefficient and costly.

Accordingly, this measure would provide that the District Courts and the upstate City Courts, whose civil jurisdiction already is very similar to that of the Civil Court, be granted the same equity jurisdiction in housing matters that the latter now enjoys. In such fashion, the State will take a major step toward promoting the quality of life in its larger upstate communities.

This measure, which would take effect on the first day of January next succeeding the date on which it becomes law and which would apply to all actions and proceedings commenced on or after that date, would have no fiscal implications.

[3]District Courts have been established in Nassau and Suffolk Counties. City Courts have been established in each of the State's 61 cities outside New York City.

Proposal

AN ACT to amend the uniform district court act, the uniform city court act, the multiple dwelling law and the multiple residence law, in relation to granting limited equity jurisdiction

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

Section 1. Section 203 of the uniform district court act, as amended by chapter 11 of the laws of 1984, is amended to read as follows:

§203. [Mechanic's lien.] Actions involving real property. (a) The court shall have jurisdiction of [an action for the establishment of a mechanic's lien on real property] the following actions provided that the real property involved is located in whole or in part within a district of the court in the county [, and]:

(1) An action for the establishment of a mechanic's lien on real property to recover a personal judgment for the amount due, where the lien asserted does not, at the time the action is commenced, exceed $15,000.

(2) An action brought to impose and collect a civil penalty for a violation of state or local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law, the multiple residence law, and any applicable local housing maintenance codes, building codes and health codes.

(3) An action to recover costs, expenses and disbursements incurred by any political subdivision of the state located in whole or in part within a district of the court in the elimination or correction of a nuisance or other violation of any law described in paragraph (2) of this subdivision, or in the removal or demolition of any building pursuant to such law or laws.

(4) An action or proceeding to establish, enforce or foreclose a lien upon real property and the rents therefrom, for civil penalties or for costs, expenses and disbursements incurred by any political subdivision of the state located in whole or in part within a district of the court in the elimination of a nuisance or other violation of any law described in paragraph (2) of this subdivision, or in the removal or demolition of any building pursuant to such law or laws.

(5) Actions or proceedings for the removal of housing violations recorded pursuant to any law described in paragraph (2) of this subdivision, or for the imposition of such violation or for the stay of any penalty thereunder.

(6) An action or proceeding for the issuance of an injunction, restraining orders or other orders for the enforcement of housing standards under any law described in paragraph (2) of this subdivision.

(7) Special proceedings to vest title in any political subdivision of the state located in whole or in part within a district of the court to abandoned multiple dwellings.

(8) Actions and proceedings under article seven-A of the real property actions and proceedings law, and all summary proceedings to recover possession of residential premises to remove tenants therefrom, and to render judgment for rent due, including without limitation those cases in which a tenant alleges a defense under section seven hundred fifty-five of the real property actions and proceedings law, relating to stay of proceedings or action for rent upon failure to make repairs and section three hundred two-a of the multiple dwelling law, as applicable, relating to the abatement of rent in case of certain violations of local housing codes.

(9) Proceedings for the appointment of a receiver of rents, issues and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under such laws.

The department of any political subdivision of the state located in whole or in part within a district of the court charged with enforcing the multiple dwelling law, multiple residence law, housing maintenance code, and other state and local laws applicable to the enforcement of proper housing standards may commence any action or proceeding described in paragraphs two, three, four, five, six, and nine of this subdivision by an order to show cause, returnable within five days, or within any other time in the discretion of the court. Upon the signing of such order, the clerk of the district court shall issue an index number.

(b) On the application of any department of any political subdivision of the state located in whole or in part within a district of the court, any party, or on its own motion, the district court, shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.

(c) Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes said remedy, program, procedure or sanction will be more effective to accomplish compliance or to protect and promote the public interest; provided in the event any such proposed remedy, program or procedure entails the expenditure of monies appropriated by any political subdivision of the state located in whole or in part within a district of the court, other than for the utilization and deployment of personnel and services incidental thereto, the court shall give notice of such proposed remedy, program or procedure to the department of such political subdivision that is charged with the enforcement of local laws relating to housing maintenance and shall not employ such proposed remedy, program or procedure, as the case may be, if such department shall advise the court in writing within the

time fixed by the court, which shall not be less than fifteen days after such notice has been given, of the reasons such order should not be issued, which advice shall become part of the record. The court may retain continuing jurisdiction of any action or proceeding relating to a building until all violations of law have been removed.

(d) In any of the actions or proceedings specified in subdivision (a) and on the application of any party, a department of any political subdivision of the state located within a district of the court or the district court, on its own motion, may join any other person or department of any political subdivision of the state located within a district of the court as a party in order to effectuate proper housing maintenance standards and to promote the public interest.

§2. Paragraphs 2-a and 3 of subdivision (b) and subdivision (c) of section 209 of the uniform district court act, paragraph 3 as amended by chapter 919 of the laws of 1970, paragraph 2-a as added by chapter 514 of the laws of 1995, are amended to read as follows:

(2-a) the activity complained of has as its basis a violation of local law or ordinance relating to land use, building regulation or fire prevention in which case, upon the motion of the prosecuting attorney in accordance with article sixty-three of the civil practice law and rules, the court may issue a preliminary injunction or a temporary restraining order restraining such activity; or

(3) pursuant to § 1508 of this act, in conjunction with an enforcement proceeding; or

(4) pursuant to section three hundred six of the multiple dwelling law, as applicable, or pursuant to the multiple residence law, as applicable, or pursuant to applicable provisions of local housing maintenance codes, in conjunction with enforcement of housing standards.

(c) Receivers. No receiver shall be appointed by this court except pursuant to §1508 of

this act, relative to an enforcement proceeding, or in an action brought pursuant to subdivision five of section three hundred nine of the multiple dwelling law, as applicable, relative to the appointment of a receiver for the recovery of costs, expenses and disbursements incurred by any political subdivision of the state in the elimination or correction of a nuisance or in the removal or demolition of a building pursuant thereto.

§3. Paragraph (a) of section 405 of the uniform district court act is amended to read as follows:

(a) in an action involving real property [a mechanic's lien action] as defined in §203 of this act; or

§4. Section 203 of the uniform city court act is amended to read as follows:

§203. [Mechanic's lien.] Actions involving real property. (a) The court shall have jurisdiction of [an action for the establishment of a mechanic's lien on real property] the following actions provided that the real property involved is located in whole or in part within the city[, and]:

(1) An action for the establishment of a mechanic's lien on real property to recover a personal judgment for the amount due, where the lien asserted does not, at the time the action is commenced, exceed [the sum referred to in §202] $15,000.

(2) An action brought to impose and collect a civil penalty for a violation of state or local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law, the multiple residence law, and any applicable local housing maintenance codes, building codes and health codes.

(3) An action to recover costs, expenses and disbursements incurred by any political

subdivision of the state in the elimination or correction of a nuisance or other violation of any law described in paragraph (2) of this subdivision, or in the removal or demolition of any building pursuant to such law or laws.

(4) An action or proceeding to establish, enforce or foreclose a lien upon real property and the rents therefrom, for civil penalties or for costs, expenses and disbursements incurred by any political subdivision of the state in the elimination of a nuisance or other violation of any law described in paragraph (2) of this subdivision, or in the removal or demolition of any building pursuant to such law or laws.

(5) Actions or proceedings for the removal of housing violations recorded pursuant to any law described in paragraph (2) of this subdivision, or for the imposition of such violation or for the stay of any penalty thereunder.

(6) An action or proceeding for the issuance of an injunction, restraining orders or other orders for the enforcement of housing standards under any law described in paragraph (2) of this subdivision.

(7) Special proceedings to vest title in any political subdivision of the state to abandoned multiple dwellings.

(8) Actions and proceedings under article seven-A of the real property actions and proceedings law, and all summary proceedings to recover possession of residential premises to remove tenants therefrom, and to render judgment for rent due, including without limitation those cases in which a tenant alleges a defense under section seven hundred fifty-five of the real property actions and proceedings law, relating to stay of proceedings or action for rent upon failure to make repairs and section three hundred two-a of the multiple dwelling law, as

applicable, relating to the abatement of rent in case of certain violations of local housing codes.

(9) Proceedings for the appointment of a receiver of rents, issues and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under such laws.

The department of any political subdivision of the state charged with enforcing the multiple dwelling law, multiple residence law, housing maintenance code, and other state and local laws applicable to the enforcement of proper housing standards may commence any action or proceeding described in paragraphs two, three, four, five, six, and nine of this subdivision by an order to show cause, returnable within five days, or within any other time in the discretion of the court. Upon the signing of such order, the clerk of the city court shall issue an index number.

(b) On the application of a department of any political subdivision of the state, any party, or on its own motion, the city court, shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.

(c) Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes said remedy, program, procedure or sanction will be more effective to accomplish compliance or to protect and promote the public interest; provided in the event any such proposed remedy, program or procedure entails the expenditure of monies appropriated by any political subdivision of the state, other than for the utilization and deployment of personnel and services incidental thereto, the court shall give notice of such proposed remedy, program or procedure to the department of such political subdivision that is charged with the enforcement of local laws relating to housing maintenance and shall not employ such proposed remedy, program or procedure, as the case may be, if such department shall

advise the court in writing within the time fixed by the court, which shall not be less than fifteen days after such notice has been given, of the reasons such order should not be issued, which advice shall become part of the record. The court may retain continuing jurisdiction of any action or proceeding relating to a building until all violations of law have been removed.

(d) In any of the actions or proceedings specified in subdivision (a) and on the application of any party, a department of any political subdivision of the state or the city court, on its own motion, may join any other person or department of any political subdivision of the state as a party in order to effectuate proper housing maintenance standards and to promote the public interest.

§5. Paragraphs 2-a and 3 of subdivision (b) and subdivision (c) of section 209 of the uniform city court act, as amended by chapter 919 of the laws of 1970, paragraph 2-a as added by chapter 514 of the laws of 1995, are amended to read as follows:

(2-a) the activity complained of has as its basis a violation of local law or ordinance relating to land use, building regulation or fire prevention in which case, upon the motion of the prosecuting attorney in accordance with article sixty-three of the civil practice law and rules, the court may issue a preliminary injunction or a temporary restraining order restraining such activity; or

(3) pursuant to §1508 of this act, in conjunction with an enforcement proceeding; or

(4) pursuant to section three hundred six of the multiple dwelling law, as applicable, or pursuant to the multiple residence law, as applicable, or pursuant to applicable provisions of local housing maintenance codes, in conjunction with enforcement of housing standards.

(c) Receivers. No receiver shall be appointed by this court except pursuant to §1508 of

this act, relative to an enforcement proceeding, or in an action brought pursuant to subdivision five of section three hundred nine of the multiple dwelling law, as applicable, relative to the appointment of a receiver for the recovery of costs, expenses and disbursements incurred by any political subdivision of the state in the elimination or correction of a nuisance or in the removal or demolition of a building pursuant thereto.

§6. Paragraph (a) of section 405 of the uniform city court act is amended to read as follows:

(a) in an action involving real property [a mechanic's lien action] as defined in §203 of this act; or

§7. The opening unlettered paragraph of subdivision 2 of section 306 of the multiple dwelling law, as amended by chapter 982 of the laws of 1972, is amended to read as follows:

In any such action or proceeding the department may, by affidavit setting forth the facts, apply to the supreme court, or to any justice thereof, or, if the premises in respect to which the action is brought are situated in the city of New York, to the New York city civil court, or, if the premises in respect to which the action is brought are situated in whole or in part within a district of the court, to the district court, or, if the premises in respect to which the action is brought are situated in whole or in part within a city outside of the city of New York, to the city court of such city, for:

§8. Paragraph a of subdivision 5 of section 309 of the multiple dwelling law is amended to read as follows:

a. If the department shall desire that a receiver be appointed as hereinafter provided to remove or remedy a nuisance described in paragraph e of subdivision one of this section and that

such receiver shall obtain a lien for costs incurred in connection therewith in favor of the department of real estate, which shall have the priority with respect to existing mortgages or liens provided in paragraph e of this subdivision, it shall within five days after the service of the order upon the owner serve a copy of such order upon every mortgagee and lienor of record personally or by registered mail, return receipt requested, at the address set forth in the recorded mortgage or lien. Appended to the copy of such order shall be a notice addressed to such mortgagee and lienor stating that in the event the nuisance is not removed or remedied in the manner and within the time specified in the order, the department may apply to the supreme court, or to the housing part of the New York city civil court, if the premises are located in the city of New York, or, to the district court, if the premises are located in whole or in part within a district of the court, or, to the city court of a city outside the city of New York, if the premises are located in whole or in part within such city, for an order to show cause why a receiver of the rents, issues and profits of the property shall not be appointed with rights therein superior to those of such owner, mortgagee or lienor.

§9. Subdivision 3 of section 303 of the multiple residence law, as added by chapter 580 of the laws of 1951, is amended to read as follows:

3. The person or department charged with the duty of enforcing the provisions of this chapter in a municipality or portion thereof shall have power to enter, examine, and inspect, or cause to be examined and inspected, any building or property for the purpose of carrying out the duties of such person or department under this chapter [and]. Such person or department is authorized and empowered to issue departmental notices and orders and is authorized to institute appropriate judicial action or proceeding to enforce any building code.

§10. This act shall take effect on the first day of January next succeeding the date on which it shall become a law and shall apply to all actions and proceedings commenced on or after such effective date.

V. FUTURE MATTERS

The Committee will continue to review the various ideas and suggestions posed by judges, nonjudicial employees, practitioners and members of the public concerning all issues relating to the operations of the local courts across New York State.

The Committee may confer with the Chief Administrative Judge's other Advisory Committees when reviewing issues relating to the operations of the local courts.

Respectfully submitted,

Hon. Judy Harris Kluger – Co-Chair
Hon. Duncan MacAffer – Co-Chair

Daniel Alessandrino
Jack Baer
Hon. Fern Fisher
Hon. Madeleine Fitzgibbon
Hon. William O'Brien
Bruna DiBiase
Becky Letko
Donna McCullough
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