



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
COMMITTEE ON STATE COURTS OF SUPERIOR JURISDICTION**

**A.6835
S.4578**

**M. of A. Simotas
Sen. Bonacic**

AN ACT to amend the civil practice law and rules, in relation to the service of papers

THIS BILL IS APPROVED

The New York City Bar Association, founded in 1870, is a private, non-profit organization of more than 23,000 attorneys, judges, and law professors, and is one of the oldest bar associations in the United States. The Committee on State Courts of Superior Jurisdiction (“the Committee”) addresses issues relating to the New York State Supreme Court, the Appellate Division, the Court of Claims and the Court of Appeals, and is comprised of both public and private sector attorneys who routinely practice and represent clients in these courts. As part of its agenda, the Committee considers and comments on proposed amendments to the Civil Practice Law and Rules or court rules.

After review and deliberation, the Committee has voted to support the enactment A.6835/S.4578. The proposed bill would amend Section 2103 of the civil practice law and rules in two important respects.

The first respect in which the proposal would change CPLR 2103 is to permit service upon an attorney from outside the state by regular mail. Under current law, CPLR 2103(b)(6) permits service upon an attorney by overnight delivery. One 2009 First Department decision, however, prohibits service upon an attorney from outside the state by regular mail. The Committee does not perceive any legal or practical distinction between service by overnight mail and service by regular delivery as far as whether such service may be made from outside the state; whether service is by mail or by overnight delivery, it presumably will reach the recipient and, therefore, the two should be treated in a consistent manner. As far as whether service may be mailed from outside the state, the Committee believes that such service should be permissible. As it is common that out-of-state lawyers are admitted *pro hac*, service from outside the state is consistent with *pro hac* appearances by out-of-state attorneys. Thus, the Committee supports permitting out-of-state service by mail upon attorneys.

Relatedly, the Committee also supports differentiating the number of days between out-of-state service by mail (6 days) and in-state service by mail (5 days). While the Committee has not

compared the average time for mailing in-state and out-of-state, it nevertheless seems logical that an in-state mailing will take less time to arrive than a mailing from more distant states such as Alaska, Hawaii and California.

The Committee also supports a second important change to CPLR 2103. The proposed amendment would require a stipulation signed by the party to be served before fax service can be utilized. Under current law "[t]he designation of a facsimile telephone number in the address block subscribed on a paper served or filed in the course of an action or proceeding shall constitute consent to service by facsimile transmission in accordance with this subdivision." This provision has the potential to make attorneys subject to service by fax even when that is not their intention. Under the new provision, parties would have to consent affirmatively before fax service would be permitted.

At the same time that the Committee supports the amendment regarding fax service, the Committee also would support provisions dealing with e-mail service. Based on the Committee's understanding, service by fax is rare, and agreements on e-mail service are more common. The Committee, therefore, suggests that the Legislature develop procedures for service by e-mail.

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