

CIVIL COURT OF THE CITY OF NEW YORK

LEGAL/STATUTORY MEMORANDUM

Subject: Information Subpoenas

Class: LSM - 173
Category: GP-10, GP-30
LT-10, LT-30
SC-10, SC- 30

Eff. Date: September 2, 2011

The Laws of 2011 Chapter 342 have amended the Civil Practice Law and Rules § 5224 and the General Business Law § 601 and § 602. in relation to prohibited debt collection practices.

Section one amends CPLR by § 5224 amending paragraph 3 (I). The amendment of subparagraph (i) provides that a judgment creditor certify that it is serving information subpoenas in compliance with both the CPLR and General Business Law.

Section two amends section 601 of the General Business Law by adding a new subparagraph 10. This subparagraph requires the judgment creditor or their agent that sends more than fifty subpoenas per month to maintain records for five years on information subpoenas sent. The records shall set forth the grounds for the reasonable belief required under CPLR 5224. The amendment also sets forth a civil penalty in an action brought by the attorney general for failing to maintain records.

Section three amends section 602 of the general business law to create a cause of action for an aggrieved party served with 50 or more subpoenas per month by a creditor who fails to maintain the required records or whose grounds are not reasonable.

Based on these amendments, effective September 2, 2011, there is additional language required in the certification signed by the judgment creditor or his or her attorney contained in CPLR 5224(a)(3)(I) to the effect that there has been compliance with GBL § 601.

Please see attached.

9/21/2011

Date

/S/

Fern A. Fisher
Deputy Chief Administrative Judge

STATE OF NEW YORK

4530--B

Cal. No. 915

2011-2012 Regular Sessions

IN SENATE

April 11, 2011

Introduced by Sens. SALAND, FARLEY, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules and the general business law, in relation to prohibited debt collection practices

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

1 Section 1. Subparagraph (i) of paragraph 3 of subdivision (a) of rule
2 5224 of the civil practice law and rules, as amended by chapter 452 of
3 the laws of 2006, the opening paragraph as amended by chapter 552 of the
4 laws of 2006, is amended to read as follows:
5 (i) information subpoenas, served on an individual or entity other
6 than the judgment debtor, may be served on an individual, corporation,
7 partnership or sole proprietorship only if the judgment creditor or the
8 judgment creditor's attorney has a reasonable belief that the party
9 receiving the subpoena has in their possession information about the
10 debtor that will assist the creditor in collecting his or her judgment.
11 Any information subpoena served pursuant to this subparagraph shall
12 contain a certification signed by the judgment creditor or his or her
13 attorney stating the following: I HEREBY CERTIFY THAT THIS INFORMATION
14 SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND
15 SECTION 601 OF THE GENERAL BUSINESS LAW THAT I HAVE A REASONABLE BELIEF
16 THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR POSSESSION INFORMA-
17 TION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING THE
18 JUDGMENT. By signing the certification, the judgment creditor or attor-
19 ney certifies that, to the best of that person's knowledge, information

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 and belief, formed after an inquiry reasonable under the circumstances,
2 that the individual or entity receiving the subpoena has relevant infor-
3 mation about the debtor.

4 § 2. Subdivision 9 of section 601 of the general business law, as
5 added by chapter 753 of the laws of 1973, is amended and a new subdivi-
6 sion 10 is added to read as follows:

7 9. Use a communication which simulates in any manner legal or judicial
8 process or which gives the appearance of being authorized, issued or
9 approved by a government, governmental agency, or attorney at law when
10 it is not[-]; or

11 10. If such principal creditor or agent sends more than fifty informa-
12 tion subpoenas per month, fail to keep complete records concerning all
13 information subpoenas sent by such principal creditor or agent. Such
14 records shall be maintained for five years. Contemporaneous records
15 shall be kept that set forth with specificity the grounds for such
16 principal creditor or agent's reasonable belief, which must be certified
17 and accompany each information subpoena pursuant to rule fifty-two
18 hundred twenty-four of the civil practice law and rules, that the party
19 receiving the subpoena has in its possession information about the
20 debtor that will assist the creditor in collecting his or her judgement.
21 In addition to any other penalty that may be imposed, failure to maintain
22 records in accordance with this subdivision shall subject such principal
23 creditor or agent to a civil penalty of not more than fifty dollars per
24 subpoena, up to a maximum of five thousand dollars per violation, in an
25 action brought by the attorney general.

26 § 3. Section 602 of the general business law is amended by adding a
27 new subdivision 3 to read as follows:

28 3. Any aggrieved person or entity served with more than fifty informa-
29 tion subpoenas per month by a principal creditor or his or her agent
30 shall also have a cause of action to challenge compliance with subdivi-
31 sion ten of section six hundred one of this article and/or the certif-
32 ication requirements of rule fifty-two hundred twenty-four of the civil
33 practice law and rules. In such action, a successful plaintiff shall be
34 awarded ten dollars for each information subpoena served upon such
35 plaintiff where it is shown that the required certification for such
36 information subpoena was not made pursuant to rule fifty-two hundred
37 twenty-four of the civil practice law and rules, that the required
38 record for such information subpoena was not maintained pursuant to
39 subdivision ten of section six hundred one of this article, or that the
40 specific grounds for the certification required to accompany such infor-
41 mation subpoena pursuant to rule fifty-two hundred twenty-four of the
42 civil practice law and rules were not reasonable. A successful plaintiff
43 may also be awarded court costs and attorney fees.

44 § 4. This act shall take effect on the thirtieth day after it shall
45 have become a law and shall apply to information subpoenas served on or
46 after such date.