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Memorandum in Support

March 30, 2026

A. 1379

By: M. of A. Dinowitz
Assembly Committee: Judiciary

Effective Date: 1st day of January next succeeding the date on which it shall have become a law.

AN ACT to amend the civil practice law and rules, in relation to class action.

LAW AND SECTIONS REFERRED TO: CPLR Section 901, 902, 908, and 909.

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

The New York State Bar Association's Committee on the Civil Practice Law and Rules (the "Committee") supports the enactment of A.1379 ("the Bill"), which would modernize the administration of class actions. NYSBA's Committee on the CPLR engaged in a careful review of the initial proposal developed by the New York City Bar and collaborated in preparing the current bill. The comparable federal rule, Rule 23 of the Federal Rules of Civil Procedure, has been amended numerous times since its adoption in the mid-1960's. In contrast, Article 9 of the CPLR has not been materially amended since its enactment in 1975, and the amendments proposed in the Bill are long overdue.[1]

HOW WOULD THE AMENDMENTS CHANGE NEW YORK LAW

The following amendments are proposed, listed here in the order in which changes would be made to Article 9:

- CPLR 901(b) precludes class certification for actions demanding a statutory penalty or minimum measure of recovery. Since the United States Supreme Court decided in 2010 that it was a procedural and not substantive rule of law, it applies only in state court.[2] The Committee believes that CPLR 901(b) both is outdated and promotes forum-shopping.

[1] The proposal was most recently endorsed in "Report of the Advisory Committee on Civil Practice to the Chief Administrative Judge of the Courts of the State of New York," at 29 (2025), *available at* www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2025%20CPLR%20Committee%20Report.pdf .

[2] *Shady Grove Orthopedic Associates, PA. v. Allstate Insurance Company*, 559 U.S. 393, 397 (2010). *Shady Grove* was described as a "game changer" in Thomas A. Dickerson, *State Class Actions: Game Changer*, N.Y.L.J., Apr. 6, 2010, at 6.

- The proposed new CPLR 901(b) would modify a judicially developed rule predating the adoption of Article 9 in 1975, which prohibits class actions against governmental entities. The existing common law rule is largely a source of confusion now, having been made subject to numerous exceptions in recent years.[3] Section 1 of the Bill recommends a new CPLR 901(b) (in lieu of the current CPLR 901(b) discussed above), stating that class certification shall not be considered an inferior method of adjudication simply because it addresses governmental operations. In each of the past three years the Governor has vetoed a bill that would have mandated that a court "not deny or withhold class certification solely because the action involves governmental operations." *See*, *e.g.*, S.5137/A.4721, introduced this year for the fourth successive year. We believe the language of A.1379, by simply removing a presumption instead of imposing a mandate, is responsive to the Governor's veto message. Our view is that New York's class action law needs more comprehensive reform than a standalone bill directed at overruling the government operations rule. We recommend passing the more comprehensive A.1379.

- Section 2 of the Bill will incorporate into CPLR 902 the language from Rule 23(c)(1)(A) of the Federal Rules, stating that motions shall be made "at an early practicable time."

- The adequacy of class counsel is addressed in Article 9 of the CPLR only indirectly. The current CPLR 901(a)(4) states that a class may be certified when the court finds that "the representative parties will fairly and adequately protect the interests of the class." Federal studies recognized the inadequacy of this language (Rule 23(a)(4)), and in 2003 a new Rule 23(g) was adopted that specified factors to be considered in appointing class counsel. Section 2 of the Bill proposes a new CPLR 902(b) to provide guidance comparable to the current Federal Rule 23(g).

- The current CPLR 908 provides that a class action is not to be dismissed, discontinued, or compromised without judicial approval and notice to the class, even before certification. The Court of Appeals has recognized the desirability of a change, but has held that because of precedent change should come from the legislature.[4] Class notice imposes substantial

[3] *See City of New York v. Maul*, 14 N.Y. 3d 499, 509 (2010) (CPLR Article 9 was designed "to set up a flexible, functional scheme whereby class actions could qualify without the present undesirable and socially detrimental restrictions"); *Hurrell-Haring v. State*, 81 A.D.3d 69, 75 (3d Dep't 2011) (reversing the trial court's application of the government operations rule, concluding that all cases "involving claims of systemic deficiencies which seek widespread, systematic reform" were class actions); *Watts v. Wing*, 308 A.D.2d 391, 392 (1st Dep't 2003) (government operations rule inapplicable where the putative class was composed of both those for whom harm is prospective and those for whom the harm already had occurred).

[4] This construction of CPLR 908 dates to *Avena v. Ford Motor Co*., 85 A.D.2d 149 (1st Dep't 1982). Courts in other jurisdictions have not been consistent in construing this language. Richard Schager, *Judicial Approval, Class Notice Required for Settlement of Uncertified Class Actions*, N.Y..L.J., Jan. 24, 2018. In December 2017 the Court of Appeals acknowledged the difficulties presented by this construction. *Desrosiers v. Perry Ellis Menswear*, 30 N.Y.3d 488 (2017). In rejecting an appeal to overrule the 35-year-old First Department precedent, however, a divided Court described changes proposed for CPLR 908 in two Reports of the New York City Bar and in A.9573 (2016) and concluded that legislative action was the proper approach to change the rule.

and often unnecessary expenses. Section 3 of the Bill adopts a more flexible notice provision, requiring notice only where class members would be bound or where the court concludes that notice is necessary to protect the interests of the members of the class. While the 2003 amendments to Federal Rule 23 removed the requirement of judicial approval of pre-certification settlements, this Bill retains the longstanding New York rule requiring such approval.

- Section 4 of the Bill adds to CPLR 909 the phrase "to the extent not otherwise limited by law," to confirm that where a specific statute authorizes or imposes limits on a fee award to be paid by a defendant, the standards of that more specific statute govern eligibility for and the amount of any award, not the general fee provision of CPLR 909.

CONCLUSION

The New York State Bar Association's Committee on Civil Practice Law and Rules **supports** this important Bill, which will bring the CPLR's class action procedures up to date and continue the trend in recent years to improve and modernize the administration of justice in New York.

Id. at 397-98. A strong dissent criticized this construction as requiring notice that "would essentially inform putative class members that an individual claim – of which they received no prior notice – was being resolved by an agreement that was not binding on them." Id. at 503 (Stein, J., dissenting).