S T A T E  O F  N E W  Y O R K

8318--A

2009-2010 Regular Sessions

I N  A S S E M B L Y

May 14, 2009

Introduced by M. of A. ZEBROWSKI -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to the time of service, the time in which a defect in form must be raised, a copy of a proposed amended pleading and the time of voluntary discontinuances

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 306-b of the civil practice law and rules, as amended by chapter 473 of the laws of 2001, is amended to read as follows:

S 306-b. Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause. Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the [filing of the summons and complaint, summons with notice, third-party summons and complaint, or petition] COMMENCEMENT OF THE ACTION OR PROCEEDING, provided that in an action or proceeding, except a proceeding commenced under the election law, where the applicable statute of limitations is four months or less, service shall be made not later than fifteen days after the date on which the applicable statute of limitations expires. If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.

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

LBD10091-02-0

S 2. Subdivision (f) of rule 2101 of the civil practice law and rules is amended to read as follows:

(f) Defects in form; waiver. A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within [two] FIFTEEN days after the receipt thereof, [he] THE PARTY ON WHOM THE PAPER IS SERVED returns the paper to the party serving it with a statement of particular objections.

S 3. Subdivision (b) of rule 3025 of the civil practice law and rules, such section as renumbered by chapter 318 of the laws of 1962, is amended to read as follows:

(b) Amendments and supplemental pleadings by leave. A party may amend his OR HER pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. ANY MOTION TO AMEND OR SUPPLEMENT PLEADINGS SHALL BE ACCOMPANIED BY THE PROPOSED AMENDED OR SUPPLEMENTAL PLEADING CLEARLY SHOWING THE CHANGES OR ADDITIONS TO BE MADE TO THE PLEADING.

S 4. Paragraph 1 of subdivision (a) of rule 3217 of the civil practice law and rules, as amended by chapter 736 of the laws of 1989, is amended to read as follows:

1. by serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading is served or, IF NO RESPONSIVE PLEADING IS REQUIRED, within twenty days after service of the pleading asserting the claim[, whichever is earlier,] and filing the notice with proof of service with the clerk of the court; or

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.