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

5960

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. SCHNEIDERMAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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, the use of subpoenas duces tecum, 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.

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

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

LBD10091-01-9

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. Subdivision (a) of rule 3122 of the civil practice law and rules, as amended by chapter 575 of the laws of 2002, is amended to read as follows:

(a) (1) Within twenty days of service of a notice or subpoena duces tecum under rule 3120 or section 3121, the party or person to whom the notice or subpoena duces tecum is directed, if that party or person objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularity the reasons for each objection. If objection is made to part of an item or category, the part shall be specified. [A medical provider served with a subpoena duces tecum requesting the production of a patient's medical records pursuant to this rule need not respond or object to the subpoena if the subpoena is not accompanied by a written authorization by the patient. Any subpoena served upon a medical provider requesting the medical records of a patient shall state in conspicuous bold-faced type that the records shall not be provided unless the subpoena is accompanied by a written authorization by the patient.] The party seeking disclosure under rule 3120 or section 3121 may move for an order under rule 3124 or section 2308 with respect to any objection to, or other failure to respond to or permit inspection as requested by, the notice or subpoena duces tecum, respectively, or any part thereof.

(2) A MEDICAL PROVIDER SERVED WITH A SUBPOENA DUCES TECUM REQUESTING THE PRODUCTION OF A PATIENT'S MEDICAL RECORDS PURSUANT TO THIS RULE NEED NOT RESPOND OR OBJECT TO THE SUBPOENA IF THE SUBPOENA IS NOT ACCOMPANIED BY A WRITTEN AUTHORIZATION BY THE PATIENT, OR A COURT ORDER DIRECTING THE PRODUCTION OF THE DOCUMENTS. ANY SUBPOENA SERVED UPON A MEDICAL PROVIDER REQUESTING THE MEDICAL RECORDS OF A PATIENT SHALL STATE IN CONSPICUOUS BOLD-FACED TYPE THAT THE RECORDS SHALL NOT BE PROVIDED UNLESS THE SUBPOENA IS ACCOMPANIED BY A WRITTEN AUTHORIZATION BY THE PATIENT, OR A COURT ORDER DIRECTING THE PRODUCTION OF THE DOCUMENTS.

S 5. 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 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.