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

3635

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. GIANARIS -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to establishing voluntary certification of civil trial attorneys

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

Section 1. The judiciary law is amended by adding two new sections 468-c and 483-a to read as follows:

S 468-C. CERTIFICATION OF CIVIL TRIAL ATTORNEYS. 1. ANY PERSON ADMITTED TO PRACTICE AS AN ATTORNEY AND COUNSELLOR AT LAW IN THIS STATE MAY VOLUNTARILY SEEK CERTIFICATION IN THE PROFESSIONAL PRACTICE OF CIVIL LITIGATION UPON RECEIVING CERTIFICATION BY THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS SECTION, AND AGREEING TO AND DEMONSTRATING THE FOLLOWING:

(A) ADMISSION TO PRACTICE LAW IN THIS STATE FOR AT LEAST FIVE YEARS;

(B) PARTICIPATION IN TWICE THE MANDATORY CONTINUING LEGAL EDUCATION REQUIRED FOR ATTORNEYS PRACTICING IN THIS STATE AS PROVIDED IN PART FIFTEEN HUNDRED OF TITLE TWENTY-TWO OF THE NEW YORK CODES, RULES AND REGULATIONS. SUCH ADDITIONAL CONTINUING LEGAL EDUCATION REQUIREMENTS SHALL PERTAIN TO THE PROFESSIONAL PRACTICE OF CIVIL LITIGATION;

(C) ADHERENCE TO A CODE OF ETHICAL CONDUCT FOR CIVIL TRIAL ATTORNEYS TO BE ESTABLISHED BY THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION;

(D) NOT HAVE ACCEPTED CIVIL LITIGATION MATTERS FROM ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, CORPORATION OR PARTNERSHIP, OR AGENT OR EMPLOYEE THEREOF, IN VIOLATION OF SUCH CODE OF ETHICAL CONDUCT; AND

(E) HAS RESTRICTED ADVERTISEMENTS AND REPRESENTATIONS SEEKING TO OBTAIN PERSONAL INJURY OR WRONGFUL DEATH CASES TO CONFORM TO SUCH CODE OF ETHICAL CONDUCT, THE PROVISIONS OF THIS SECTION AND SECTION FOUR HUNDRED EIGHTY-THREE-A OF THIS ARTICLE.

2. THE COURT OF APPEALS SHALL APPOINT, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, A BOARD ON CIVIL TRIAL ATTORNEY CERTIF-

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

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ICATION. SUCH BOARD SHALL CONSIST OF SEVEN MEMBERS WHO ARE ATTORNEYS AND COUNSELLORS AT LAW ADMITTED TO PRACTICE IN THIS STATE. OF THE MEMBERS FIRST APPOINTED, THREE SHALL BE APPOINTED FOR A TERM OF THREE YEARS; TWO FOR A TERM OF TWO YEARS; AND TWO FOR A TERM OF ONE YEAR. AS SUCH TERMS EXPIRE, EACH NEW APPOINTMENT SHALL BE FOR A TERM OF THREE YEARS. THE COURT OF APPEALS SHALL ANNUALLY DESIGNATE A CHAIR AND A VICE-CHAIR FROM AMONG THE MEMBERS OF THE BOARD.

3. THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL, PURSUANT TO THE PROVISIONS OF THIS SECTION, AND SUBJECT TO THE PRIOR APPROVAL OF THE COURT OF APPEALS, PROMULGATE AND AMEND REGULATIONS GOVERNING THE CERTIFICATION PROGRAM ESTABLISHED PURSUANT TO THIS SECTION.

4. THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL HAVE THE POWER TO, AMONG OTHER THINGS, CERTIFY PERSONS AS CIVIL TRIAL ATTORNEYS AND ESTABLISH A CODE OF ETHICAL CONDUCT TO BE ADHERED TO BY ATTORNEYS CERTIFIED PURSUANT TO THE PROVISIONS OF THIS SECTION FOR THE PURPOSE OF MAINTAINING AND ENHANCING THE INTEGRITY OF THE PROFESSIONAL PRACTICE OF CIVIL LITIGATION AND FURTHER PROTECTING THE RIGHTS OF INJURED PERSONS AND THEIR FAMILIES.

5. THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL ENSURE THAT ANY PERSON WHO ADVERTISES OR MAKES REPRESENTATIONS FOR THE PURPOSE OF OBTAINING, OR WHICH ARE LIKELY TO OBTAIN, DIRECTLY OR INDIRECTLY, PERSONAL INJURY OR WRONGFUL DEATH CASES IN THIS STATE IS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND SECTION FOUR HUNDRED EIGHTY-THREE-A OF THIS ARTICLE.

6. THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL, CONSISTENT WITH THIS SECTION AND ITS REGULATIONS, ESTABLISH PROCEDURES, PUBLISH FORMS AND MAINTAIN RECORDS AS REQUIRED FOR THE CONDUCT OF THE BOARD'S OPERATIONS AND THE CERTIFICATION OF ATTORNEYS, INCLUDING MAINTAINING A CURRENT LIST OF ALL ATTORNEYS CERTIFIED AS CIVIL TRIAL ATTORNEYS IN THIS STATE. AN ANNUAL REPORT SHALL BE SUBMITTED TO THE COURT OF APPEALS AT THE END OF EACH CALENDAR YEAR AS TO THE STATUS OF THE CERTIFICATION PROGRAM.

7. THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL COOPERATE WITH THE CONTINUING LEGAL EDUCATION BOARD, THE NEW YORK STATE BAR ASSOCIATION, LAW SCHOOLS IN THIS STATE, AND RECOGNIZED CONTINUING LEGAL EDUCATION SPONSORS IN DEVELOPING AND MAINTAINING COURSES, CLINICS AND OTHER OFFERINGS BY SUCH INSTITUTIONS TO ENHANCE THE PROFESSIONAL PRACTICE OF CIVIL LITIGATION AND INCREASE THE KNOWLEDGE AND SKILLS OF ATTORNEYS WHO SEEK TO BE CERTIFIED CIVIL TRIAL ATTORNEYS. THE BOARD MAY ALSO COOPERATE WITH OTHER LAW SCHOOLS, BAR ASSOCIATIONS AND AGENCIES INTERESTED IN THE PROFESSIONAL PRACTICE OF CIVIL LITIGATION.

8. THE MEMBERS OF THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE ENTITLED TO RECEIVE THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES.

9. THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION MAY EMPLOY, AND AT ITS PLEASURE REMOVE, SUCH PERSONNEL AS IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE AVAILABLE THEREFOR.

10. MEMBERS OF THE BOARD ON CIVIL TRIAL ATTORNEY CERTIFICATION SHALL BE CONSIDERED EMPLOYEES OF THE STATE FOR THE PURPOSE OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW.

S 483-A. ADVERTISING AND REPRESENTATION OF SERVICES AS A CERTIFIED CIVIL TRIAL ATTORNEY. 1. ANY PERSON WHO ADVERTISES OR MAKES REPRESENTATIONS FOR THE PURPOSE OF OBTAINING, OR WHICH ARE LIKELY TO OBTAIN, DIRECTLY OR INDIRECTLY, PERSONAL INJURY OR WRONGFUL DEATH CASES WHO IS NOT A CERTIFIED CIVIL TRIAL ATTORNEY PURSUANT TO THE PROVISIONS OF

SECTION FOUR HUNDRED SIXTY-EIGHT-C OF THIS ARTICLE SHALL CONSPICUOUSLY DISCLAIM IN SUCH ADVERTISEMENTS AND REPRESENTATIONS THE FOLLOWING STATEMENT: "THE STATE HAS ESTABLISHED A VOLUNTARY SPECIALTY WITHIN THE LEGAL PROFESSION OF CERTIFIED CIVIL TRIAL ATTORNEY TO FURTHER PROTECT THE RIGHTS OF INJURED PERSONS AND THEIR FAMILIES, AND THE LAW REQUIRES THE PUBLIC TO BE INFORMED THAT THE ATTORNEY REFERRED TO IN THIS ADVERTISEMENT IS NOT A CERTIFIED CIVIL TRIAL ATTORNEY".

2. THE DISCLAIMER PROVISIONS OF THIS SECTION SHALL APPLY TO ADVERTISEMENTS AND REPRESENTATIONS CONTAINING MORE THAN ONE ATTORNEY MADE FOR THE PURPOSES OF OBTAINING, OR WHICH ARE LIKELY TO OBTAIN, DIRECTLY OR INDIRECTLY, PERSONAL INJURY OR WRONGFUL DEATH CASES IN WHICH NOT ALL OF THE ATTORNEYS REFERENCED IN SUCH ADVERTISEMENTS OR REPRESENTATIONS ARE CERTIFIED CIVIL TRIAL ATTORNEYS.

3. FOR THE PURPOSES OF THIS SECTION "CONSPICUOUSLY" SHALL MEAN EQUALLY IN SIZE, TYPE, VOLUME OR PROMINENCE AND POSITIONED ADJACENT TO THE ADVERTISEMENT OR REPRESENTATION. THE REQUIREMENTS OF THIS SUBDIVISION SUPPLEMENT, AND SHALL NOT BE CONSTRUED TO LIMIT, THE OBLIGATIONS OF ATTORNEYS AND COUNSELLORS AT LAW PURSUANT TO THIS ARTICLE AND THE REGULATIONS ADOPTED PURSUANT THERETO.

S 2. Section 485 of the judiciary law, as added by chapter 1031 of the laws of 1965, is amended to read as follows:

S 485. Violation of certain preceding sections a misdemeanor. Any person violating the provisions of [sections] SECTION FOUR HUNDRED SIXTY-EIGHT-C, four hundred seventy-eight, four hundred seventy-nine, four hundred eighty, four hundred eighty-one, four hundred eighty-two, four hundred eighty-three, FOUR HUNDRED EIGHTY-THREE-A or four hundred eighty-four, shall be guilty of a misdemeanor.

S 3. This act shall take effect immediately.