

4459

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

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

AN ACT to amend the civil practice law and rules, in relation to the notice of medical, dental or podiatric malpractice action

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

1 Section 1. Rule 3406 of the civil practice law and rules, as added by
2 chapter 294 of the laws of 1985, the rule heading as amended by chapter
3 184 of the laws of 1988, subdivision (a) as amended by chapter 485 of
4 the laws of 1986, subdivision (b) as amended by chapter 165 of the laws
5 of 1991, is amended to read as follows:
6 Rule 3406. [Mandatory filing and pre-calendar] PRE-CALENDAR conference
7 in dental, podiatric and medical malpractice actions. [(a) Mandatory
8 filing. Not more than sixty days after issue is joined, the plaintiff in
9 an action to recover damages for dental, medical or podiatric malprac-
10 tice shall file with the clerk of the court in which the action is
11 commenced a notice of dental, medical or podiatric malpractice action,
12 on a form to be specified by the chief administrator of the courts.
13 Together with such notice, the plaintiff shall file: (i) proof of
14 service of such notice upon all other parties to the action; (ii) proof
15 that, if demanded, authorizations to obtain medical, dental, podiatric
16 and hospital records have been served upon the defendants in the action;
17 and (iii) such other papers as may be required to be filed by rule of
18 the chief administrator of the courts. The time for filing a notice of
19 dental, medical or podiatric malpractice action may be extended by the
20 court only upon a motion made pursuant to section two thousand four of
21 this chapter.
22 (b) Pre-calendar conference.] The chief administrator of the courts,
23 in accordance with such standards and administrative policies as may be
24 promulgated pursuant to section twenty-eight of article six of the

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

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1 constitution, shall adopt special calendar control rules for actions to
2 recover damages for dental, podiatric or medical malpractice, AND FOR
3 SUCH OTHER ACTIONS AS THE CHIEF ADMINISTRATOR MAY DEEM APPROPRIATE.
4 Such rules shall [require a pre-calendar conference in such an action,
5 the purpose of which shall include, but not be limited to, encouraging
6 settlement, simplifying or limiting issues and establishing a timetable
7 for disclosure, establishing a timetable for offers and depositions
8 pursuant to subparagraph (ii) of paragraph one of subdivision (d) of
9 section thirty-one hundred one of this chapter, future conferences, and
10 trial. The timetable for disclosure shall provide for the completion of
11 disclosure not later than twelve months after the notice of dental,
12 podiatric or medical malpractice is filed and shall require that all
13 parties be ready for the trial of the case not later than eighteen
14 months after such notice is filed. The initial pre-calendar conference
15 shall be held after issue is joined in a case but before a note of issue
16 is filed. To the extent feasible, the justice convening the pre-calendar
17 conference shall hear and decide all subsequent pre-trial motions in the
18 case and shall be assigned the trial of the case. The chief administra-
19 tor of the courts also shall provide for the imposition of costs or
20 other sanctions, including imposition of reasonable attorney's fees,
21 dismissal of an action, claim, cross-claim, counterclaim or defense, or
22 rendering a judgment by default for failure of a party or a party's
23 attorney to comply with these special calendar control rules or any
24 order of a court made thereunder. The chief administrator of the courts,
25 in the exercise of discretion, may provide for exemption from the
26 requirement of a pre-calendar conference in any judicial district or a
27 county where there exists no demonstrated need for such conferences]
28 PRESCRIBE A TIME FOR FILING A REQUEST FOR JUDICIAL INTERVENTION AND
29 REQUIRE A PRELIMINARY CONFERENCE AS SOON AS PRACTICAL FOLLOWING SUCH
30 FILING.

31 S. 2. This act shall take effect on the first of January next succeed-
32 ing the date on which it shall have become a law.