

5221

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 21, 2013

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

AN ACT to amend the civil practice law and rules, in relation to disclosure of expert witnesses

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

1     Section 1. Subparagraph (i) of paragraph 1 of subdivision (d) of  
2     section 3101 of the civil practice law and rules, as amended by chapter  
3     184 of the laws of 1988, is amended to read as follows:  
4     (i) Upon request, each party shall identify each person whom the party  
5     expects to call as an expert witness at trial and shall disclose in  
6     reasonable detail the subject matter on which each expert is expected to  
7     testify, the substance of the facts and opinions on which each expert is  
8     expected to testify, the qualifications of each expert witness and a  
9     summary of the grounds for each expert's opinion. A PARTY WHO HAS THE  
10    BURDEN OF PROOF ON A CLAIM, CAUSE OF ACTION, DAMAGE OR DEFENSE SHALL  
11    SERVE ITS RESPONSE TO AN EXPERT DEMAND PURSUANT TO THIS SECTION ON OR  
12    BEFORE THE FILING OF THE NOTE OF ISSUE. SUCH PARTY HAS UNTIL THE FILING  
13    OF THE NOTE OF ISSUE TO SERVE SUCH RESPONSE REGARDLESS OF HOW EARLY THE  
14    DEMAND IS MADE. ANY OPPOSING PARTY SHALL SERVE ITS ANSWERING RESPONSE  
15    PURSUANT TO THIS SECTION NO LATER THAN SIXTY DAYS AFTER THE FILING OF  
16    THE NOTE OF ISSUE. ANY AMENDED OR SUPPLEMENTAL EXPERT DISCLOSURE SHALL  
17    BE ALLOWED ONLY WITH THE PERMISSION OF THE COURT. A PARTY WHO FAILS TO  
18    COMPLY WITH THIS RULE IS PRECLUDED FROM OFFERING THE TESTIMONY AND OPIN-  
19    IONS OF THE EXPERT FOR WHOM A TIMELY RESPONSE HAS NOT BEEN GIVEN. THE  
20    STATUTORY STAY FOR DISCLOSURE PURSUANT TO SUBDIVISION (B) OF RULE THIR-  
21    TY-TWO HUNDRED FOURTEEN OF THIS CHAPTER UPON THE SERVICE OF A DISPOSI-  
22    TIVE MOTION UNDER RULE THIRTY-TWO HUNDRED ELEVEN OF THIS CHAPTER SHALL  
23    NOT APPLY TO THE SERVICE OF THESE EXPERT RESPONSES. ANY MOTION BY A  
24    PARTY TO PRECLUDE, OR LIMIT EXPERT TESTIMONY PURSUANT TO THIS SECTION,  
25    MUST BE MADE AS SOON AS PRACTICABLE BUT NO LATER THAN FORTY-FIVE DAYS

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

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1 AFTER THE PARTY'S RECEIPT OF THE EXPERT DISCLOSURE OR THE MOTION WILL BE  
2 WAIVED. However, where a party for good cause shown retains an expert an  
3 insufficient period of time before the commencement of trial to give  
4 appropriate notice thereof, the party shall not thereupon be precluded  
5 from introducing the expert's testimony at the trial solely on grounds  
6 of noncompliance with this paragraph. In that instance, upon motion of  
7 any party, made before or at trial, or on its own initiative, the court  
8 may make whatever order may be just. In an action for medical, dental or  
9 podiatric malpractice, a party, in responding to a request, may omit the  
10 names of medical, dental or podiatric experts but shall be required to  
11 disclose all other information concerning such experts otherwise  
12 required by this paragraph.

13 S 2. This act shall take effect immediately and shall apply to all  
14 actions commenced after such date.