

5073

2013-2014 Regular Sessions

I N S E N A T E

May 8, 2013

Introduced by Sen. BONACIC -- (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 want of prosecution

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

- 1 Section 1. Subdivisions (a) and (b) of rule 3216 of the civil practice
2 law and rules, as added by chapter 770 of the laws of 1967, paragraph 3
3 of subdivision (b) as amended by chapter 4 of the laws of 1978, are
4 amended to read as follows:
- 5 (a) Where a party unreasonably neglects to proceed generally in an
6 action or otherwise delays in the prosecution thereof against any party
7 who may be liable to a separate judgment, or unreasonably fails to serve
8 and file a note of issue, the court, on its own initiative or upon
9 motion, WITH NOTICE TO THE PARTIES, may dismiss the party's pleading on
10 terms. Unless the order specifies otherwise, the dismissal is not on the
11 merits.
- 12 (b) No dismissal shall be directed under any portion of subdivision
13 (a) of this rule and no court initiative shall be taken or motion made
14 thereunder unless the following conditions precedent have been complied
15 with:
- 16 (1) Issue must have been joined in the action;
- 17 (2) One year must have elapsed since the joinder of issue OR SIX
18 MONTHS MUST HAVE ELAPSED SINCE THE ISSUANCE OF THE PRELIMINARY COURT
19 CONFERENCE ORDER WHERE SUCH AN ORDER HAS BEEN ISSUED, WHICHEVER IS
20 LATER;
- 21 (3) The court or party seeking such relief, as the case may be, shall
22 have served a written demand by registered or certified mail requiring
23 the party against whom such relief is sought to resume prosecution of
24 the action and to serve and file a note of issue within ninety days

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

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1 after receipt of such demand, and further stating that the default by
2 the party upon whom such notice is served in complying with such demand
3 within said ninety day period will serve as a basis for a motion by the
4 party serving said demand for dismissal as against him OR HER for unrea-
5 sonably neglecting to proceed. WHERE THE WRITTEN DEMAND IS SERVED BY
6 THE COURT, THE DEMAND SHALL SET FORTH THE SPECIFIC CONDUCT CONSTITUTING
7 THE NEGLECT, WHICH CONDUCT SHALL DEMONSTRATE A GENERAL PATTERN OF DELAY
8 IN PROCEEDING WITH THE LITIGATION.
9 S 2. This act shall take effect on the first of January next succeed-
10 ing the date on which it shall have become law.