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

5081

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 the scope of disclosure by a non-party

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

Section 1. Subdivision (a) of section 3101 of the civil practice law and rules, as amended by chapter 98 of the laws of 1993, is amended to read as follows:

(a) Generally. There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by[:

(1) a party, or the officer, director, member, agent or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he or she will not be able to attend the trial, or a person authorized to practice medicine, dentistry or podiatry who has provided medical, dental or podiatric care or diagnosis to the party demanding disclosure, or who has been retained by such party as an expert witness; and

(4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required] ANY PERSON. A SUBPOENA SERVED UPON A NON-PARTY SHALL STATE THE NATURE OF THE ACTION.

S 2. Subparagraph (iii) of paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules, as amended by chapter 184 of the laws of 1988, is amended to read as follows:

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

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(iii) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine, dentistry or podiatry who [is the party's treating or retained expert, as described in paragraph three of subdivision (a) of this section,] HAS PROVIDED MEDICAL, DENTAL OR PODIATRIC CARE OR DIAGNOSIS TO THE PARTY DEMANDING DISCLOSURE OR WHO HAS BEEN RETAINED BY THAT PARTY AS AN EXPERT WITNESS in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

S 3. This act shall take effect immediately and shall apply to all actions pending on such effective date or commenced on or after such effective date.