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

5221

2013-2014 Regular Sessions

I N A S S E M B L Y

February 21, 2013

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:

Section 1. Subparagraph (i) 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:

(i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. A PARTY WHO HAS THE BURDEN OF PROOF ON A CLAIM, CAUSE OF ACTION, DAMAGE OR DEFENSE SHALL SERVE ITS RESPONSE TO AN EXPERT DEMAND PURSUANT TO THIS SECTION ON OR BEFORE THE FILING OF THE NOTE OF ISSUE. SUCH PARTY HAS UNTIL THE FILING OF THE NOTE OF ISSUE TO SERVE SUCH RESPONSE REGARDLESS OF HOW EARLY THE DEMAND IS MADE. ANY OPPOSING PARTY SHALL SERVE ITS ANSWERING RESPONSE PURSUANT TO THIS SECTION NO LATER THAN SIXTY DAYS AFTER THE FILING OF THE NOTE OF ISSUE. ANY AMENDED OR SUPPLEMENTAL EXPERT DISCLOSURE SHALL BE ALLOWED ONLY WITH THE PERMISSION OF THE COURT. A PARTY WHO FAILS TO COMPLY WITH THIS RULE IS PRECLUDED FROM OFFERING THE TESTIMONY AND OPINIONS OF THE EXPERT FOR WHOM A TIMELY RESPONSE HAS NOT BEEN GIVEN. THE STATUTORY STAY FOR DISCLOSURE PURSUANT TO SUBDIVISION (B) OF RULE THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER UPON THE SERVICE OF A DISPOSITIVE MOTION UNDER RULE THIRTY-TWO HUNDRED ELEVEN OF THIS CHAPTER SHALL NOT APPLY TO THE SERVICE OF THESE EXPERT RESPONSES. ANY MOTION BY A PARTY TO PRECLUDE, OR LIMIT EXPERT TESTIMONY PURSUANT TO THIS SECTION, 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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AFTER THE PARTY'S RECEIPT OF THE EXPERT DISCLOSURE OR THE MOTION WILL BE WAIVED. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical, dental or podiatric malpractice, a party, in responding to a request, may omit the names of medical, dental or podiatric experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

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