Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 4. Special Proceedings (Refs & Annos)
§ 403. Notice of petition; service; order to show cause

(a) Notice of petition. A notice of petition shall specify the time and place of the hearing on the petition and the supporting affidavits, if any, accompanying the petition.

(b) Time for service of notice of petition and answer. A notice of petition, together with the petition and affidavits specified in the notice, shall be served on any adverse party at least eight days before the time at which the petition is noticed to be heard. An answer and supporting affidavits, if any, shall be served at least two days before such time. A reply, together with supporting affidavits, if any, shall be served at or before such time. An answer shall be served at least seven days before such time if a notice of petition served at least twelve days before such time so demands; whereupon any reply shall be served at least one day before such time.

(c) Manner of service. A notice of petition shall be served in the same manner as a summons in an action.

(d) Order to show cause. The court may grant an order to show cause to be served, in lieu of a notice of petition at a time and in a manner specified therein.

CREDIT(S)

(L.1962, c. 308. As amended L.1988, c. 761, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 4. Special Proceedings (Refs & Annos)
→ → **§ 404. Objections in point of law**

(a) By respondent. The respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court may permit the respondent to answer, upon such terms as may be just; and unless the order specifies otherwise, such answer shall be served and filed within five days after service of the order with notice of entry; and the petitioner may re-notice the matter for hearing upon two days' notice, or the respondent may re-notice the matter for hearing upon service of the answer upon seven days' notice.

(b) By petitioner. The petitioner may raise an objection in point of law to new matter contained in the answer by setting it forth in his reply or by moving to strike such matter on the day the petition is noticed or re-noticed to be heard.

CREDIT(S)

(L.1962, c. 308. Amended L.1993, c. 202, § 2.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 4. Special Proceedings (Refs & Annos)
→ → **§ 408. Disclosure**

Leave of court shall be required for disclosure except for a notice under section 3123. A notice under section 3123 may be served at any time not later than three days before the petition is noticed to be heard and the statement denying or setting forth the reasons for failing to admit or deny shall be served not later than one day before the petition is noticed to be heard, unless the court orders otherwise on motion made without notice. This section shall not be applicable to proceedings in a surrogate's court, nor to proceedings relating to express trusts pursuant to article 77, both of which shall be governed by article 31.

CREDIT(S)

(L.1962, c. 308. Amended L.1962, c. 318, § 2; L.1964, c. 477; L.1976, c. 193, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 9 Class Actions (Refs & Annos)
§ 901. Prerequisites to a class action

a One or more members of a class may sue or be sued as representative parties on behalf of all if.

1 the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable,

2 there are questions of law or fact common to the class which predominate over any questions affecting only individual members,

3 the claims or defenses of the representative parties are typical of the claims or defenses of the class;

4 the representative parties will fairly and adequately protect the interests of the class; and

5 a class action is superior to other available methods for the fair and efficient adjudication of the controversy

b Unless a statute creating or imposing a penalty, or a minimum measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action

CREDIT(S)

(Added L 1975, c 207, § 1)

Current through L 2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333

END OF DOCUMENT

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 9. Class Actions (Refs & Annos)
§ 902. Order allowing class action

Within sixty days after the time to serve a responsive pleading has expired for all persons named as defendants in an action brought as a class action, the plaintiff shall move for an order to determine whether it is to be so maintained. An order under this section may be conditional, and may be altered or amended before the decision on the merits on the court's own motion or on motion of the parties. The action may be maintained as a class action only if the court finds that the prerequisites under section 901 have been satisfied. Among the matters which the court shall consider in determining whether the action may proceed as a class action are:

1. The interest of members of the class in individually controlling the prosecution or defense of separate actions;

2. The impracticability or inefficiency of prosecuting or defending separate actions;

3. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

4. The desirability or undesirability of concentrating the litigation of the claim in the particular forum;

5. The difficulties likely to be encountered in the management of a class action.

CREDIT(S)

(Added L.1975, c. 207, § 1. Amended L.1975, c. 474, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

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Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 9. Class Actions (Refs & Annos)
→ → **§ 903. Description of class**

The order permitting a class action shall describe the class. When appropriate the court may limit the class to those members who do not request exclusion from the class within a specified time after notice.

CREDIT(S)

(Added L.1975, c. 207, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

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Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 9 Class Actions (Refs & Annos)
→ → **§ 904. Notice of class action**

(a) In class actions brought primarily for injunctive or declaratory relief, notice of the pendency of the action need not be given to the class unless the court finds that notice is necessary to protect the interests of the represented parties and that the cost of notice will not prevent the action from going forward

(b) In all other class actions, reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs

(c) The content of the notice shall be subject to court approval. In determining the method by which notice is to be given, the court shall consider

I the cost of giving notice by each method considered

II the resources of the parties and

III the stake of each represented member of the class, and the likelihood that significant numbers of represented members would desire to exclude themselves from the class or to appear individually, which may be determined, in the court's discretion, by sending notice to a random sample of the class

(d) I Preliminary determination of expenses of notification Unless the court orders otherwise, the plaintiff shall bear the expense of notification The court may, if justice requires, require that the defendant bear the expense of notification, or may require each of them to bear a part of the expense in proportion to the likelihood that each will prevail upon the merits The court may hold a preliminary hearing to determine how the costs of notice should be apportioned

II Final determination Upon termination of the action by order or judgment, the court may, but shall not be required to, allow to the prevailing party the expenses of notification as taxable disbursements under article eighty-three of the civil practice law and rules

CREDIT(S)

(Added L.1975, c. 207, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 9 Class Actions (Refs & Annos)
→ → **§ 905. Judgment**

The judgment in an action maintained as a class action, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class

CREDIT(S)

(Added L 1975, c 207, § 1)

Current through L 2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 9. Class Actions (Refs & Annos)
→ → **§ 906. Actions conducted partially as class actions**

When appropriate,

1. an action may be brought or maintained as a class action with respect to particular issues, or

2. a class may be divided into subclasses and each subclass treated as a class.

The provisions of this article shall then be construed and applied accordingly.

CREDIT(S)

(Added L.1975, c. 207, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 9. Class Actions (Refs & Annos)
→ → Rule 907. Orders in conduct of class actions

In the conduct of class actions the court may make appropriate orders:

1. determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

2. requiring, for the protection of the members of the class, or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, or to appear and present claims or defenses, or otherwise to come into the action;

3. imposing conditions on the representative parties or on intervenors;

4. requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

5. directing that a money judgment favorable to the class be paid either in one sum, whether forthwith or within such period as the court may fix, or in such installments as the court may specify;

6. dealing with similar procedural matters.

The orders may be altered or amended as may be desirable from time to time.

CREDIT(S)

(Added L.1975, c. 207, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective: April 27, 2009

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 9. Class Actions (Refs & Annos)
→ → **Rule 908. Dismissal, discontinuance or compromise**

A class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs.

CREDIT(S)

(Added L.1975, c. 207, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective: September 23, 2011

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 9 Class Actions (Refs & Annos)
→ → Rule 909. Attorneys' fees

If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees to the representatives of the class and/or to any other person that the court finds has acted to benefit the class based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class

CREDIT(S)

(Added L 1975, c 207, § 1 Amended L 2011, c 566, § 1, eff Sept 23, 2011)

Current through L 2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 13-A. Proceeds of a Crime-Forfeiture (Refs & Annos)
→ → **§ 1335. Temporary restraining order**

1. Generally. If, on a motion for a preliminary injunction, the claiming authority shall show that immediate and irreparable injury, loss or damages may result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time.

2. Service. Unless the court orders otherwise, a temporary restraining order together with the papers upon which it was based, and a notice of hearing for the preliminary injunction, shall be personally served in the same manner as a summons.

CREDIT(S)

(Added L.1984, c. 669, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 22. Stay, Motions, Orders and Mandates (Refs & Annos)
→ → **§ 2212. Where motion made, in supreme court action**

(a) Motions on notice. A motion on notice in an action in the supreme court shall be noticed to be heard in the judicial district where the action is triable or in a county adjoining the county where the action is triable. Unless statute, civil practice rule or local court rule provides otherwise, the motion shall be noticed to be heard before a motion term or, upon order to show cause granted by a justice, before that justice out of court.

(b) Ex parte motions. A motion in an action in the supreme court that may be made without notice may be made at a motion term or to a justice out of court in any county in the state.

(c) Motions before a county court or judge. The chief administrator of the courts may by rule provide for the hearing of motions on notice or ex parte motions in an action or proceeding in the supreme court by a term of the county court or a county judge in the county in which venue is laid during periods in which no supreme court trial or special term is in session in the county.

(d) Rules of the chief administrator of the courts. The chief administrator may by rule exclude motions within a department, district or county from the operation of subdivisions (a), (b) and (c) of this section, provided, however, that the practice in counties within the city of New York shall be uniform.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 807, §§ 1, 2; L.1965, c. 149, § 1; L.1986, c. 355, § 2.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: April 28, 2009

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)
§ 3101. Scope of disclosure

(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.

(b) Privileged matter. Upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable.

(c) Attorney's work product. The work product of an attorney shall not be obtainable.

(d) Trial preparation. 1. Experts. (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. 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 med-

ical, dental or podiatric experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

(ii) In an action for medical, dental or podiatric malpractice, any party may, by written offer made to and served upon all other parties and filed with the court, offer to disclose the name of, and to make available for examination upon oral deposition, any person the party making the offer expects to call as an expert witness at trial. Within twenty days of service of the offer, a party shall accept or reject the offer by serving a written reply upon all parties and filing a copy thereof with the court. Failure to serve a reply within twenty days of service of the offer shall be deemed a rejection of the offer. If all parties accept the offer, each party shall be required to produce his or her expert witness for examination upon oral deposition upon receipt of a notice to take oral deposition in accordance with rule thirty-one hundred seven of this chapter. If any party, having made or accepted the offer, fails to make that party's expert available for oral deposition, that party shall be precluded from offering expert testimony at the trial of the action.

(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, 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.

(iv) [Eff. Feb. 17, 2014. Repealed eff. Feb. 17, 2014 by L.2013, c. 23, § 4, prior to subparagraph taking effect.] In an action for podiatric medical malpractice, a physician may be called as an expert witness at trial.

2. Materials. Subject to the provisions of paragraph one of this subdivision, materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent), may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

(e) Party's statement. A party may obtain a copy of his own statement.

(f) Contents of insurance agreement. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purpose of this subdivision, an application for insurance shall not be treated as part of an insurance agreement.

(g) Accident reports. Except as is otherwise provided by law, in addition to any other matter which may be subject to disclosure, there shall be full disclosure of any written report of an accident prepared in the regular course of business operations or practices of any person, firm, corporation, association or other public or private entity, unless prepared by a police or peace officer for a criminal investigation or prosecution and disclosure would interfere with a criminal investigation or prosecution.

(h) Amendment or supplementation of responses. A party shall amend or supplement a response previously given to a request for disclosure promptly upon the party's thereafter obtaining information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading. Where a party obtains such information an insufficient period of time before the commencement of trial appropriately to amend or supplement the response, the party shall not thereupon be precluded from introducing evidence at the trial solely on grounds of noncompliance with this subdivision. 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. Further amendment or supplementation may be obtained by court order.

(i) In addition to any other matter which may be subject to disclosure, there shall be full disclosure of any films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof, involving a person referred to in paragraph one of subdivision (a) of this section. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use. The provisions of this subdivision shall not apply to materials compiled for law enforcement purposes which are exempt from disclosure under section eighty-seven of the public officers law.

CREDIT(S)

(L.1962, c. 308. Amended L.1975, c. 668, § 1; L.1979, c. 268, § 1; L.1980, c. 283, § 1; L.1984, c. 294, § 2; L.1985, c. 294, § 4; L.1986, c. 485, § 4; L.1988, c. 184, § 2; L.1991, c. 165, § 45; L.1993, c. 98, §§ 1, 2; L.1993, c. 574, § 1; L.2012, c. 438, § 5, eff. Feb. 17, 2014; L.2013, c. 23, § 4, eff. Feb. 17, 2014.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: January 1, 2011

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)
§ 3102. Method of obtaining disclosure

(a) Disclosure devices. Information is obtainable by one or more of the following disclosure devices: depositions upon oral questions or without the state upon written questions, interrogatories, demands for addresses, discovery and inspection of documents or property, physical and mental examinations of persons, and requests for admission.

(b) Stipulation or notice normal method. Unless otherwise provided by the civil practice law and rules or by the court, disclosure shall be obtained by stipulation or on notice without leave of the court.

(c) Before action commenced. Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony.

(d) After trial commenced. Except as provided in section 5223, during and after trial, disclosure may be obtained only by order of the trial court on notice.

(e) Action pending in another jurisdiction. Except as provided in section three thousand one hundred nineteen of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition.

(f) Action to which state is party. In an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 422, § 1; L.1964, c. 388, § 15; L.1967, c. 638, § 1; L.1984, c. 294, § 3; L.1993, c. 98, §§ 3, 4; L.2010, c. 29, § 3, eff. Jan. 1, 2011.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: July 31, 2013

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 31 Disclosure (Refs & Annos)
§ 3103. Protective orders

(a) Prevention of abuse. The court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts

(b) Suspension of disclosure pending application for protective order. Service of a notice of motion for a protective order shall suspend disclosure of the particular matter in dispute

(c) Suppression of information improperly obtained. If any disclosure under this article has been improperly or irregularly obtained so that a substantial right of a party is prejudiced, the court, on motion, may make an appropriate order, including an order that the information be suppressed

CREDIT(S)

(L 1962, c 308 Amended L 1993, c 98, § 5, L 2013, c 205, § 1, eff July 31, 2013)

Current through L 2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333

END OF DOCUMENT

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Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)
→ → **§ 3104. Supervision of disclosure**

(a) Motion for, and extent of, supervision of disclosure. Upon the motion of any party or witness on notice to all parties or on its own initiative without notice, the court in which an action is pending may by one of its judges or a referee supervise all or part of any disclosure procedure.

(b) Selection of referee. A judicial hearing officer may be designated as a referee under this section, or the court may permit all of the parties in an action to stipulate that a named attorney may act as referee. In such latter event, the stipulation shall provide for payment of his fees which shall, unless otherwise agreed, be taxed as disbursements.

(c) Powers of referee; motions referred to person supervising disclosure. A referee under this section shall have all the powers of the court under this article except the power to relieve himself of his duties, to appoint a successor, or to adjudge any person guilty of contempt. All motions or applications made under this article shall be returnable before the judge or referee, designated under this section and after disposition, if requested by any party, his order shall be filed in the office of the clerk.

(d) Review of order of referee. Any party or witness may apply for review of an order made under this section by a referee. The application shall be by motion made in the court in which the action is pending within five days after the order is made. Service of a notice of motion for review shall suspend disclosure of the particular matter in dispute. If the question raised by the motion may affect the rights of a witness, notice shall be served on him personally or by mail at his last known address. It shall set forth succinctly the order complained of, the reason it is objectionable and the relief demanded.

(e) Payment of expenses of referee. Except where a judicial hearing officer has been designated a referee hereunder, the court may make an appropriate order for the payment of the reasonable expenses of the referee.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 307, § 1; L.1983, c. 840, § 3.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)
→ → **Rule 3106. Priority of depositions; witnesses; prisoners; designation of deponent**

(a) Normal priority. After an action is commenced, any party may take the testimony of any person by deposition upon oral or written questions. Leave of the court, granted on motion, shall be obtained if notice of the taking of the deposition of a party is served by the plaintiff before that party's time for serving a responsive pleading has expired.

(b) Witnesses. Where the person to be examined is not a party or a person who at the time of taking the deposition is an officer, director, member or employee of a party, he shall be served with a subpoena. Unless the court orders otherwise, on motion with or without notice, such subpoena shall be served at least twenty days before the examination. Where a motion for a protective order against such an examination is made, the witness shall be notified by the moving party that the examination is stayed.

(c) Prisoners. The deposition of a person confined under legal process may be taken only by leave of the court.

(d) Designation of deponent. A party desiring to take the deposition of a particular officer, director, member or employee of a person shall include in the notice or subpoena served upon such person the identity, description or title of such individual. Such person shall produce the individual so designated unless they shall have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced.

CREDIT(S)

(L.1962, c. 308. Amended L.1984, c. 294, § 4; L.1985, c. 327, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: September 1, 2003

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)

→→ Rule 3120. Discovery and production of documents and things for inspection, testing, copying or photographing

1. After commencement of an action, any party may serve on any other party a notice or on any other person a subpoena duces tecum:

(i) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served; or

(ii) to permit entry upon designated land or other property in the possession, custody or control of the party or person served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon.

2. The notice or subpoena duces tecum shall specify the time, which shall be not less than twenty days after service of the notice or subpoena, and the place and manner of making the inspection, copy, test or photograph, or of the entry upon the land or other property and, in the case of an inspection, copying, testing or photographing, shall set forth the items to be inspected, copied, tested or photographed by individual item or by category, and shall describe each item and category with reasonable particularity.

3. The party issuing a subpoena duces tecum as provided hereinabove shall at the same time serve a copy of the subpoena upon all other parties and, within five days of compliance therewith, in whole or in part, give to each party notice that the items produced in response thereto are available for inspection and copying, specifying the time and place thereof.

4. Nothing contained in this section shall be construed to change the requirement of section 2307 that a subpoena duces tecum to be served upon a library or a department or bureau of a municipal corporation, or of the state, or an officer thereof, requires a motion made on notice to the library, department, bureau or officer, and the adverse party, to a justice of the supreme court or a judge of the court in which the action is triable.

CREDIT(S)

(Formerly § 3120, L.1962, c. 308. Renumbered rule 3120 L.1962, c. 315, § 1. Amended Jud.Conf.1966 Proposal No. 2; L.1984, c. 294, § 7; L.1993, c. 98, § 8; L.2002, c. 575, § 2, eff. Sept. 1, 2003.)

Current through L.2013, chapters 1 to 340.

END OF DOCUMENT

c

Effective: April 29, 2009

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 31 Disclosure (Refs & Annos)
→ → **Rule 3122-a. Certification of business records**

(a) Business records produced pursuant to a subpoena duces tecum under rule 3120 shall be accompanied by a certification, sworn in the form of an affidavit and subscribed by the custodian or other qualified witness charged with responsibility of maintaining the records, stating in substance each of the following

1 The affiant is the duly authorized custodian or other qualified witness and has authority to make the certification,

2 To the best of the affiant's knowledge, after reasonable inquiry, the records or copies thereof are accurate versions of the documents described in the subpoena duces tecum that are in the possession, custody, or control of the person receiving the subpoena,

3 To the best of the affiant's knowledge, after reasonable inquiry, the records or copies produced represent all the documents described in the subpoena duces tecum, or if they do not represent a complete set of the documents subpoenaed, an explanation of which documents are missing and a reason for their absence is provided, and

4 The records or copies produced were made by the personnel or staff of the business, or persons acting under their control, in the regular course of business, at the time of the act, transaction, occurrence or event recorded therein, or within a reasonable time thereafter, and that it was the regular course of business to make such records

(b) A certification made in compliance with subdivision (a) is admissible as to the matters set forth therein and as to such matters shall be presumed true When more than one person has knowledge of the facts, more than one certification may be made

(c) A party intending to offer at a trial or hearing business records authenticated by certification subscribed pursuant to this rule shall, at least thirty days before the trial or hearing, give notice of such intent and specify the place where such records may be inspected at reasonable times No later than ten days before the trial or hearing, a party upon whom such notice is served may object to the offer of business records by certification stating the

grounds for the objection. Such objection may be asserted in any instance and shall not be subject to imposition of any penalty or sanction. Unless objection is made pursuant to this subdivision, or is made at trial based upon evidence which could not have been discovered by the exercise of due diligence prior to the time for objection otherwise required by this subdivision, business records certified in accordance with this rule shall be deemed to have satisfied the requirements of subdivision (a) of rule 4518. Notwithstanding the issuance of such notice or objection to same, a party may subpoena the custodian to appear and testify and require the production of original business records at the trial or hearing.

CREDIT(S)

(Added L.2002, c. 575, § 4, eff. Sept. 1, 2003.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)
§ 3130. Use of interrogatories

1. Except as otherwise provided herein, after commencement of an action, any party may serve upon any other party written interrogatories. Except in a matrimonial action, a party may not serve written interrogatories on another party and also demand a bill of particulars of the same party pursuant to section 3041. In the case of an action to recover damages for personal injury, injury to property or wrongful death predicated solely on a cause or causes of action for negligence, a party shall not be permitted to serve interrogatories on and conduct a deposition of the same party pursuant to rule 3107 without leave of court.

2. After the commencement of a matrimonial action or proceeding, upon motion brought by either party, upon such notice to the other party and to the non-party from whom financial disclosure is sought, and given in such manner as the court shall direct, the court may order a non-party to respond under oath to written interrogatories limited to furnishing financial information concerning a party, and further provided such information is both reasonable and necessary in the prosecution or the defense of such matrimonial action or proceeding.

CREDIT(S)

(Added L.1963, c. 422, § 3. Amended L.1979, c. 197, § 1; L.1983, c. 275, § 1; L.1986, c. 257, § 1; L.1986, c. 467, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)
→ → **§ 3131. Scope of interrogatories**

Interrogatories may relate to any matters embraced in the disclosure requirement of section 3101 and the answers may be used to the same extent as the depositions of a party. Interrogatories may require copies of such papers, documents or photographs as are relevant to the answers required, unless opportunity for this examination and copying be afforded.

CREDIT(S)

(Added L.1963, c. 422, § 3. Amended L.1975, c. 859, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: January 1, 2006

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 32 Accelerated Judgment (Refs & Annos)
Rule 3211. Motion to dismiss

(a) Motion to dismiss cause of action A party may move for judgment dismissing one or more causes of action asserted against him on the ground that

1 a defense is founded upon documentary evidence, or

2 the court has not jurisdiction of the subject matter of the cause of action, or

3 the party asserting the cause of action has not legal capacity to sue, or

4 there is another action pending between the same parties for the same cause of action in a court of any state or the United States, the court need not dismiss upon this ground but may make such order as justice requires, or

5 the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds, or

6 with respect to a counterclaim, it may not properly be interposed in the action, or

7 the pleading fails to state a cause of action, or

8 the court has not jurisdiction of the person of the defendant, or

9 the court has not jurisdiction in an action where service was made under section 314 or 315, or

10 the court should not proceed in the absence of a person who should be a party

11 the party is immune from liability pursuant to section seven hundred twenty-a of the not-for-profit corpora-

tion law. Presumptive evidence of the status of the corporation, association, organization or trust under section 501(c)(3) of the internal revenue code may consist of production of a letter from the United States internal revenue service reciting such determination on a preliminary or final basis or production of an official publication of the internal revenue service listing the corporation, association, organization or trust as an organization described in such section, and presumptive evidence of uncompensated status of the defendant may consist of an affidavit of the chief financial officer of the corporation, association, organization or trust. On a motion by a defendant based upon this paragraph the court shall determine whether such defendant is entitled to the benefit of section seven hundred twenty-a of the not-for-profit corporation law or subdivision six of section 20.09 of the arts and cultural affairs law and, if it so finds, whether there is a reasonable probability that the specific conduct of such defendant alleged constitutes gross negligence or was intended to cause the resulting harm. If the court finds that the defendant is entitled to the benefits of that section and does not find reasonable probability of gross negligence or intentional harm, it shall dismiss the cause of action as to such defendant.

(b) Motion to dismiss defense. A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.

(c) Evidence permitted; immediate trial; motion treated as one for summary judgment. Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment. Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. The court may, when appropriate for the expeditious disposition of the controversy, order immediate trial of the issues raised on the motion.

(d) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to a motion made under subdivision (a) or (b) that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion, allowing the moving party to assert the objection in his responsive pleading, if any, or may order a continuance to permit further affidavits to be obtained or disclosure to be had and may make such other order as may be just.

(e) Number, time and waiver of objections; motion to plead over. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a), and no more than one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) is waived unless raised either by such motion or in the responsive pleading. A motion based upon a ground specified in paragraph two, seven or ten of subdivision (a) may be made at any subsequent time or in a later pleading, if one is permitted; an objection that the summons and complaint, summons with notice, or notice of petition and petition was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship. The foregoing sentence shall not apply in any proceeding under subdivision one or two of section seven hundred eleven of the real property actions and proceedings law. The papers in opposition to a motion based on improper service shall contain a copy of the proof of service, whether or not previously filed. An objection based upon a ground specified in paragraph eight or nine of subdivision (a) is waived if a party moves on any of the grounds set forth in subdivision (a) without raising such objection or if, having made no objection under subdivision (a), he or she does not raise such objection in the responsive pleading.

(f) Extension of time to plead. Service of a notice of motion under subdivision (a) or (b) before service of a pleading responsive to the cause of action or defense sought to be dismissed extends the time to serve the pleading until ten days after service of notice of entry of the order.

(g) Standards for motions to dismiss in certain cases involving public petition and participation. A motion to dismiss based on paragraph seven of subdivision (a) of this section, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action involving public petition and participation as defined in paragraph (a) of subdivision one of section seventy-six-a of the civil rights law, shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(h) Standards for motions to dismiss in certain cases involving licensed architects, engineers, land surveyors or landscape architects. A motion to dismiss based on paragraph seven of subdivision (a) of this rule, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action in which a notice of claim must be served on a licensed architect, engineer, land surveyor or landscape architect pursuant to the provisions of subdivision one of section two hundred fourteen of this chapter, shall be granted unless the party responding to the motion demonstrates that a substantial basis in law exists to believe that the performance, conduct or omission complained of such licensed architect, engineer, land surveyor or landscape architect or such firm as set forth in the notice of claim was negligent and that such performance, conduct or omission was a proximate cause of personal injury, wrongful death or property damage complained of by the claimant or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant a preference in the hearing of such motion.

CREDIT(S)

(L.1962, c. 308. Amended Jud.Conf.1964 Proposal No. 6; Jud.Conf.1965 Proposal Nos. 5, 6; L.1965, c. 773, § 9; Jud.Conf.1973 Proposal No. 4; L.1986, c. 220, § 12; L.1990, c. 904, § 26; L.1991, c. 656, § 4; L.1992, c. 767, § 4; L.1996, c. 501, § 1; L.1996, c. 682, § 2; L.1997, c. 518, § 2, eff. Sept. 3, 1997; L.2005, c. 616, § 1, eff. Jan. 1, 2006.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: May 6, 2009

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 32. Accelerated Judgment (Refs & Annos)
Rule 3212. Motion for summary judgment

(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

(c) Immediate trial. If it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages, or if the motion is based on any of the grounds enumerated in subdivision (a) or (b) of rule 3211, the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion, before a referee, before the court, or before the court and a jury, whichever may be proper.

(d) Repealed.

(e) Partial summary judgment; severance. In a matrimonial action summary judgment may not be granted in favor of the non-moving party. In any other action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause

of action; or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

(g) Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.

(h) Standards for summary judgment in certain cases involving public petition and participation. A motion for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of the civil rights law, shall be granted unless the party responding to the motion demonstrates that the action, claim, cross claim or counterclaim has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(i) Standards for summary judgment in certain cases involving licensed architects, engineers, land surveyors or landscape architects. A motion for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action in which a notice of claim must be served on a licensed architect, engineer, land surveyor or landscape architect pursuant to the provisions of subdivision one of section two hundred fourteen of this chapter, shall be granted unless the party responding to the motion demonstrates that a substantial basis in fact and in law exists to believe that the performance, conduct or omission complained of such licensed architect, engineer, land surveyor or landscape architect or such firm as set forth in the notice of claim was negligent and that such performance, conduct or omission was a proximate cause of personal injury, wrongful death or property damage complained of by the claimant or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant a preference in the hearing of such motion.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 533, § 1; L.1965, c. 773, § 10; L.1973, c. 651, § 1; Jud.Conf.1973 Proposal No. 5; L.1978, c. 532, §§ 1 to 3; L.1984, c. 827, § 1. Amended L.1992, c. 767, § 5; L.1996, c. 492, § 1; L.1996, c. 682, § 3; L.1997, c. 518, § 3, eff. Sept. 3, 1997.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 32. Accelerated Judgment (Refs & Annos)
→ → Rule 3214. Motions heard by judge supervising disclosure; stay of disclosure

(a) Judge supervising disclosure. Unless the chief administrator of the courts has, by rule, provided otherwise, if a case has been assigned to a judge to supervise disclosure pursuant to section 3104, all motions preliminary to trial shall be referred to such judge whenever practicable.

(b) Stay of disclosure. Service of a notice of motion under rule 3211, 3212, or section 3213 stays disclosure until determination of the motion unless the court orders otherwise. If the motion is based solely on the defense that the summons and complaint, summons with notice, or notice of petition and petition was not properly served, disclosure shall not be stayed unless the court orders otherwise.

CREDIT(S)

(Formerly § 3214, L.1962, c. 308. Redesignated rule 3214, L.1962, c. 315, § 1. Amended L.1986, c. 355, § 7; L.1996, c. 501, § 2.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 34. Calendar Practice; Trial Preferences (Refs & Annos)
→ → **Rule 3402. Note of issue**

(a) Placing case on calendar. At any time after issue is first joined, or at least forty days after service of a summons has been completed irrespective of joinder of issue, any party may place a case upon the calendar by filing, within ten days after service, with proof of such service two copies of a note of issue with the clerk and such other data as may be required by the applicable rules of the court in which the note is filed. The clerk shall enter the case upon the calendar as of the date of the filing of the note of issue.

(b) New parties. A party who brings in a new party shall within five days thereafter serve him with the note of issue and file a statement with the clerk advising him of the bringing in of such new party and of any change in the title of the action, with proof of service of the note of issue upon the new party, and of such statement upon all parties who have appeared in the action. The case shall retain its place upon the calendar unless the court otherwise directs.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 530, § 1; L.1968, c. 19, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
→ → **§ 4104. Number of jurors**

A jury shall be composed of six persons.

CREDIT(S)

(Added L.1972, c. 185, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective:[See Text Amendments] to December 31, 2013

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
§ 4106. Alternate jurors

<[Eff. until Jan. 1, 2014. See, also, § 4106, post.]>

Unless the court, in its discretion, orders otherwise, one or two additional jurors, to be known as "alternate jurors", may be drawn upon the request of a party. Such jurors shall be drawn at the same time, from the same source, in the same manner, and have the same qualifications as the regular jurors, and be subject to the same examinations and challenges. They shall be seated with, take the oath with, and be treated in the same manner as the regular jurors, except that after final submission of the case, the court shall discharge the alternate jurors. If, before the final submission of the case, a regular juror dies, or becomes ill, or for any other reason is unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall replace the discharged juror in the jury box, and be treated as if he had been selected as one of the regular jurors.

CREDIT(S)

(L.1962, c. 308. Amended L.1972, c. 336, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
→ → **Rule 4107. Judge present at examination of jurors**

On application of any party, a judge shall be present at the examination of the jurors.

CREDIT(S)

(L.1962, c. 308. Amended Jud.Conf.1964 Proposal No. 7, eff. Sept. 1, 1964.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

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Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
§ 4108. Challenges generally

An objection to the qualifications of a juror must be made by a challenge unless the parties stipulate to excuse him. A challenge of a juror, or a challenge to the panel or array of jurors, shall be tried and determined by the court.

CREDIT(S)

(L.1962, c. 308.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
→ → **§ 4109. Peremptory challenges**

The plaintiff or plaintiffs shall have a combined total of three peremptory challenges plus one peremptory challenge for every two alternate jurors. The defendant or defendants (other than any third-party defendant or defendants) shall have a combined total of three peremptory challenges, plus one peremptory challenge for every two alternate jurors. The court, in its discretion before the examination of jurors begins, may grant an equal number of additional challenges to both sides as may be appropriate. In any case where a side has two or more parties, the court, in its discretion, may allocate that side's combined total of peremptory challenges among those parties in such manner as may be appropriate.

CREDIT(S)

(L.1962, c. 308. Amended L.1972, c. 185, § 3; L.1996, c. 655, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
→ → **§ 4110. Challenges for cause**

(a) Challenge to the favor. The fact that a juror is in the employ of a party to the action; or if a party to the action is a corporation, that he is a shareholder or a stockholder therein; or, in an action for damages for injuries to person or property, that he is a shareholder, stockholder, director, officer or employee, or in any manner interested, in any insurance company issuing policies for protection against liability for damages for injury to persons or property; shall constitute a ground for a challenge to the favor as to such juror. The fact that a juror is a resident of, or liable to pay taxes in, a city, village, town or county which is a party to the action shall not constitute a ground for challenge to the favor as to such juror.

(b) Disqualification of juror for relationship. Persons shall be disqualified from sitting as jurors if related within the sixth degree by consanguinity or affinity to a party. The party related to the juror must raise the objection before the case is opened; any other party must raise the objection no later than six months after the verdict.

CREDIT(S)

(L.1962, c. 308.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

C

Effective: November 12, 2009

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
→ → **Rule 4111. General and special verdicts and written interrogatories**

(a) General and special verdict defined. The court may direct the jury to find either a general verdict or a special verdict. A general verdict is one in which the jury finds in favor of one or more parties. A special verdict is one in which the jury finds the facts only, leaving the court to determine which party is entitled to judgment thereon.

(b) Special verdict. When the court requires a jury to return a special verdict, the court shall submit to the jury written questions susceptible of brief answer or written forms of the several findings which might properly be made or it shall use any other appropriate method of submitting the issues and requiring written findings thereon. The court shall give sufficient instruction to enable the jury to make its findings upon each issue. If the court omits any issue of fact raised by the pleadings or evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without demand, the court may make an express finding or shall be deemed to have made a finding in accordance with the judgment.

(c) General verdict accompanied by answers to interrogatories. When the court requires the jury to return a general verdict, it may also require written answers to written interrogatories submitted to the jury upon one or more issues of fact. The court shall give sufficient instruction to enable the jury to render a general verdict and to answer the interrogatories. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court shall direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or it shall require the jury to further consider its answers and verdict or it shall order a new trial. When the answers are inconsistent with each other and one or more is inconsistent with the general verdict, the court shall require the jury to further consider its answers and verdict or it shall order a new trial.

(d) Itemized verdict in medical, dental, or podiatric malpractice actions. In all actions seeking damages for medical, dental, or podiatric malpractice, or damages for wrongful death as a result of medical, dental, or podiatric malpractice, the court shall instruct the jury that if the jury finds a verdict awarding damages it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, podiatric expenses, loss of earnings, impairment of earning ability, and pain and suffering. In all such actions, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future wrongful death damages, future loss of services, and future loss of consorti-

um, the jury shall return the total amount of damages for each such item. In itemizing amounts intended to compensate for future pain and suffering, the jury shall return the total amounts of damages for future pain and suffering and shall set forth the period of years over which such amounts are intended to provide compensation. In itemizing amounts intended to compensate for future economic and pecuniary damages other than in wrongful death actions, the jury shall set forth as to each item of damage, (i) the annual amount in current dollars, (ii) the period of years for which such compensation is applicable and the date of commencement for that item of damage, (iii) the growth rate applicable for the period of years for the item of damage, and (iv) a finding of whether the loss or item of damage is permanent. Where the needs change in the future for a particular item of damage, that change shall be submitted to the jury as a separate item of damage commencing at that time. In all such actions other than wrongful death actions, the jury shall be instructed that the findings it makes with reference to future economic damages, shall be used by the court to determine future damages which are payable to the plaintiff over time.

(e) Itemized verdict in certain actions. In an action brought to recover damages for personal injury, injury to property or wrongful death, which is not subject to subdivision (d) of this rule, the court shall instruct the jury that if the jury finds a verdict awarding damages, it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element including, but not limited to, medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. Each element shall be further itemized into amounts intended to compensate for damages that have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the jury shall set forth the period of years over which such amounts are intended to provide compensation. In actions in which article fifty-A or fifty-B of this chapter applies, in computing said damages, the jury shall be instructed to award the full amount of future damages, as calculated, without reduction to present value.

(f) Relettered (e) by L.2009, c. 494, § 5, eff. Nov. 12, 2009.

CREDIT(S)

(L.1962, c. 308. Amended L.1976, c. 955, § 8; L.1984, c. 701, § 3; L.1985, c. 294, § 6; L.1985, c. 760, § 5; L.1986, c. 485, § 7; L.1986, c. 682, § 7; L.1994, c. 100, § 5; L.2003, c. 86, § 1, eff. July 26, 2003; L.2009, c. 494, pt. F, §§ 4, 5, eff. Nov. 12, 2009.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 41. Trial by a Jury (Refs & Annos)
→ → **§ 4113. Disagreement by jury**

(a) Unanimous verdict not required. A verdict may be rendered by not less than five-sixths of the jurors constituting a jury.

(b) Procedure where jurors disagree. Where five-sixths of the jurors constituting a jury cannot agree after being kept together for as long as is deemed reasonable by the court, the court shall discharge the jury and direct a new trial before another jury.

CREDIT(S)

(L.1962, c. 308.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

c

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 45. Evidence (Refs & Annos)
→ → **Rule 4515. Form of expert opinion**

Unless the court orders otherwise, questions calling for the opinion of an expert witness need not be hypothetical in form, and the witness may state his opinion and reasons without first specifying the data upon which it is based. Upon cross-examination, he may be required to specify the data and other criteria supporting the opinion.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 808, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: August 15, 2007

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight Of the Consolidated Laws
Article 45 Evidence (Refs & Annos)
Rule 4518. Business records

(a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter An electronic record, as defined in section three hundred two of the state technology law, used or stored as such a memorandum or record, shall be admissible in a tangible exhibit that is a true and accurate representation of such electronic record The court may consider the method or manner by which the electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility The term business includes a business, profession, occupation and calling of every kind

(b) Hospital bills. A hospital bill is admissible in evidence under this rule and is prima facie evidence of the facts contained, provided it bears a certification by the head of the hospital or by a responsible employee in the controller's or accounting office that the bill is correct, that each of the items was necessarily supplied and that the amount charged is reasonable This subdivision shall not apply to any proceeding in a surrogate's court nor in any action instituted by or on behalf of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, except that in a proceeding pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital, such certified hospital bills are prima facie evidence of the fact of services and of the reasonableness of any charges which do not exceed the comparable charges made by the hospital in the care of workmen's compensation patients.

(c) Other records All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician Where a hospital record is in the custody of a warehouse, or "warehouseman" as that term is defined by paragraph (h) of subdivision one of section 7-102 of the uniform commercial code, pursuant to a plan approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the commissioner, or order or resolution of the governing body or official of the hospital, and (ii) that

the record has been in the exclusive custody of such warehouse or warehousemen since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any warehouseman providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and the warehouseman is authorized to assess and collect a reasonable charge for providing the certification described by this subdivision.

(d) Any records or reports relating to the administration and analysis of a genetic marker or DNA test, including records or reports of the costs of such tests, administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law are admissible in evidence under this rule and are prima facie evidence of the facts contained therein provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or the state or by an employee delegated for that purpose, or by a qualified physician. If such record or report relating to the administration and analysis of a genetic marker test or DNA test or tests administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law indicates at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall, if unrebutted, establish the paternity of and liability for the support of a child pursuant to articles four and five of the family court act.

(e) Notwithstanding any other provision of law, a record or report relating to the administration and analysis of a genetic marker test or DNA test certified in accordance with subdivision (d) of this rule and administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law is admissible in evidence under this rule without the need for foundation testimony or further proof of authenticity or accuracy unless objections to the record or report are made in writing no later than twenty days before a hearing at which the record or report may be introduced into evidence or thirty days after receipt of the test results, whichever is earlier.

(f) Notwithstanding any other provision of law, records or reports of support payments and disbursements maintained pursuant to title six-A of article three of the social services law by the office of temporary and disability assistance or the fiscal agent under contract to the office for the provision of centralized collection and disbursement functions are admissible in evidence under this rule, provided that they bear a certification by an official of a social services district attesting to the accuracy of the content of the record or report of support payments and that in attesting to the accuracy of the record or report such official has received confirmation from the office of temporary and disability assistance or the fiscal agent under contract to the office for the provision of centralized collection and disbursement functions pursuant to section one hundred eleven-h of the social services law that the record or report of support payments reflects the processing of all support payments in the possession of the office or the fiscal agent as of a specified date, and that the document is a record or report of support payments maintained pursuant to title six-A of article three of the social services law. If so certified, such record or report shall be admitted into evidence under this rule without the need for additional foundation testimony. Such records shall be the basis for a permissive inference of the facts contained therein unless the trier of fact finds good cause not to draw such inference.

(g) Pregnancy and childbirth costs. Any hospital bills or records relating to the costs of pregnancy or birth of a child for whom proceedings to establish paternity, pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law have been or are being undertaken, are admissible in evidence under this rule and are prima facie evidence of the facts contained therein, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or the state or by an employee designated for that purpose, or by a qualified physician.

CREDIT(S)

(L.1962, c. 308. Amended Jud.Conf.1970 Proposal No. 2; L.1982, c. 695, § 3; L.1983, c. 311, § 1; L.1984, c. 792, § 3; L.1992, c. 381, § 1; L.1994, c. 170, § 350; L.1995, c. 81, § 236; L.1997, c. 398, §§ 87 to 89, eff. Nov. 11, 1997; L.2002, c. 136, § 1, eff. July 23, 2002; L.2005, c. 741, § 1, eff. Oct. 18, 2005; L.2007, c. 601, § 10, eff. Aug. 15, 2007.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 55. Appeals Generally (Refs & Annos)
§ 5501. Scope of review

(a) Generally, from final judgment. An appeal from a final judgment brings up for review:

1. any non-final judgment or order which necessarily affects the final judgment, including any which was adverse to the respondent on appeal from the final judgment and which, if reversed, would entitle the respondent to prevail in whole or in part on that appeal, provided that such non-final judgment or order has not previously been reviewed by the court to which the appeal is taken;

2. any order denying a new trial or hearing which has not previously been reviewed by the court to which the appeal is taken;

3. any ruling to which the appellant objected or had no opportunity to object or which was a refusal or failure to act as requested by the appellant, and any charge to the jury, or failure or refusal to charge as requested by the appellant, to which he objected;

4. any remark made by the judge to which the appellant objected; and

5. a verdict after a trial by jury as of right, when the final judgment was entered in a different amount pursuant to the respondent's stipulation on a motion to set aside the verdict as excessive or inadequate; the appellate court may increase such judgment to a sum not exceeding the verdict or reduce it to a sum not less than the verdict.

(b) Court of appeals. The court of appeals shall review questions of law only, except that it shall also review questions of fact where the appellate division, on reversing or modifying a final or interlocutory judgment, has expressly or impliedly found new facts and a final judgment pursuant thereto is entered. On an appeal pursuant to subdivision (d) of section fifty-six hundred one, or subparagraph (ii) of paragraph one of subdivision (a) of section fifty-six hundred two, or subparagraph (ii) of paragraph two of subdivision (b) of section fifty-six hundred two, only the non-final determination of the appellate division shall be reviewed.

(c) Appellate division. The appellate division shall review questions of law and questions of fact on an appeal from a judgment or order of a court of original instance and on an appeal from an order of the supreme court, a

county court or an appellate term determining an appeal. The notice of appeal from an order directing summary judgment, or directing judgment on a motion addressed to the pleadings, shall be deemed to specify a judgment upon said order entered after service of the notice of appeal and before entry of the order of the appellate court upon such appeal, without however affecting the taxation of costs upon the appeal. In reviewing a money judgment in an action in which an itemized verdict is required by rule forty-one hundred eleven of this chapter in which it is contended that the award is excessive or inadequate and that a new trial should have been granted unless a stipulation is entered to a different award, the appellate division shall determine that an award is excessive or inadequate if it deviates materially from what would be reasonable compensation.

(d) Appellate term. The appellate term shall review questions of law and questions of fact.

CREDIT(S)

(L.1962, c. 308. Amended L.1986, c. 682, § 10; L.1997, c. 474, § 1, eff. Nov. 24, 1997.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 55. Appeals Generally (Refs & Annos)
§ 5519. Stay of enforcement

(a) Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where:

1. the appellant or moving party is the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state; provided that where a court, after considering an issue specified in question four of section seventy-eight hundred three of this chapter, issues a judgment or order directing reinstatement of a license held by a corporation with no more than five stockholders and which employs no more than ten employees, a partnership with no more than five partners and which employs no more than ten employees, a proprietorship or a natural person, the stay provided for by this paragraph shall be for a period of fifteen days; or

2. the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed; or

3. the judgment or order directs the payment of a sum of money, to be paid in fixed installments, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party shall pay each installment which becomes due pending the appeal and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay any installments or part of installments then due or the part of them as to which the judgment or order is affirmed; or

4. the judgment or order directs the assignment or delivery of personal property, and the property is placed in the custody of an officer designated by the court of original instance to abide the direction of the court to which the appeal is taken, or an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will obey the direction of the court to which the appeal is taken; or

5. the judgment or order directs the execution of any instrument, and the instrument is executed and deposited in the office where the original judgment or order is entered to abide the direction of the court to which the appeal

is taken; or

6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the property; if the judgment or order directs the sale of mortgaged property and the payment of any deficiency, the undertaking shall also provide that the appellant or moving party shall pay any such deficiency; or

7. the judgment or order directs the performance of two or more of the acts specified in subparagraphs two through six and the appellant or moving party complies with each applicable subparagraph.

(b) Stay in action defended by insurer. If an appeal is taken from a judgment or order entered against an insured in an action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance the limit of liability of which is less than the amount of said judgment or order, all proceedings to enforce the judgment or order to the extent of the policy coverage shall be stayed pending the appeal, and no action shall be commenced or maintained against the insurer for payment under the policy pending the appeal, where the insurer:

1. files with the clerk of the court in which the judgment or order was entered a sworn statement of one of its officers, describing the nature of the policy and the amount of coverage together with a written undertaking that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the insurer shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed, to the extent of the limit of liability in the policy, plus interest and costs;

2. serves a copy of such sworn statement and undertaking upon the judgment creditor or his attorney; and

3. delivers or mails to the insured at the latest address of the insured appearing upon the records of the insurer, written notice that the enforcement of such judgment or order, to the extent that the amount it directs to be paid exceeds the limit of liability in the policy, is not stayed in respect to the insured. A stay of enforcement of the balance of the amount of the judgment or order may be imposed by giving an undertaking, as provided in paragraph two of subdivision (a), in an amount equal to that balance.

(c) Stay and limitation of stay by court order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).

(d) Undertaking. On an appeal from an order affirming a judgment or order, the undertaking shall secure both the order and the judgment or order which is affirmed.

(e) Continuation of stay. If the judgment or order appealed from is affirmed or modified, the stay shall continue for five days after service upon the appellant of the order of affirmance or modification with notice of its entry in the court to which the appeal was taken. If an appeal is taken, or a motion is made for permission to appeal, from such an order before the expiration of the five days, the stay shall continue until five days after service of notice of the entry of the order determining such appeal or motion. When a motion for permission to appeal is involved, the stay, or any other stay granted pending determination of the motion for permission to appeal, shall:

(i) if the motion is granted, continue until five days after the appeal is determined; or

(ii) if the motion is denied, continue until five days after the movant is served with the order of denial with notice of its entry.

(f) Proceedings after stay. A stay of enforcement shall not prevent the court of original instance from proceeding in any matter not affected by the judgment or order appealed from or from directing the sale of perishable property.

(g) Appeals in medical, dental or podiatric malpractice judgments. In an action for medical, dental or podiatric malpractice, if an appeal is taken from a judgment in excess of one million dollars and an undertaking in the amount of one million dollars or the limit of insurance coverage available to the appellant for the occurrence, whichever is greater, is given together with a joint undertaking by the appellant and any insurer of the appellant's professional liability that, during the period of such stay, the appellant will make no fraudulent conveyance without fair consideration as described in section two hundred seventy-three-a of the debtor and creditor law, the court to which such an appeal is taken shall stay all proceedings to enforce the judgment pending such appeal if it finds that there is a reasonable probability that the judgment may be reversed or determined excessive. In making a determination under this subdivision, the court shall not consider the availability of a stay pursuant to subdivision (a) or (b) of this section. Liability under such joint undertaking shall be limited to fraudulent conveyances made by the appellant subsequent to the execution of such undertaking and during the period of such stay, but nothing herein shall limit the liability of the appellant for fraudulent conveyances pursuant to article ten of the debtor and creditor law or any other law. An insurer that pays money to a beneficiary of such a joint undertaking shall thereupon be subrogated, to the extent of the amount to be paid, to the rights and interests of such beneficiary, as a judgment creditor, against the appellant on whose behalf the joint undertaking was executed.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 532, § 37; L.1965, c. 744, § 1; L.1975, c. 70, § 1; L.1979, c. 239, § 1; L.1988, c. 184, § 5; L.1988, c. 493, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

Effective: July 20, 1999

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 57. Appeals to the Appellate Division (Refs & Annos)
§ 5701. Appeals to appellate division from supreme and county courts

(a) Appeals as of right. An appeal may be taken to the appellate division as of right in an action, originating in the supreme court or a county court:

1. from any final or interlocutory judgment except one entered subsequent to an order of the appellate division which disposes of all the issues in the action; or

2. from an order not specified in subdivision (b), where the motion it decided was made upon notice and it:

(i) grants, refuses, continues or modifies a provisional remedy; or

(ii) settles, grants or refuses an application to resettle a transcript or statement on appeal; or

(iii) grants or refuses a new trial; except where specific questions of fact arising upon the issues in an action triable by the court have been tried by a jury, pursuant to an order for that purpose, and the order grants or refuses a new trial upon the merits; or

(iv) involves some part of the merits; or

(v) affects a substantial right; or

(vi) in effect determines the action and prevents a judgment from which an appeal might be taken; or

(vii) determines a statutory provision of the state to be unconstitutional, and the determination appears from the reasons given for the decision or is necessarily implied in the decision; or

(viii) grants a motion for leave to reargue made pursuant to subdivision (d) of rule 2221 or determines a motion for leave to renew made pursuant to subdivision (e) of rule 2221; or

3. from an order, where the motion it decided was made upon notice, refusing to vacate or modify a prior order, if the prior order would have been appealable as of right under paragraph two had it decided a motion made upon notice.

(b) Orders not appealable as of right. An order is not appealable to the appellate division as of right where it:

1. is made in a proceeding against a body or officer pursuant to article 78; or

2. requires or refuses to require a more definite statement in a pleading; or

3. orders or refuses to order that scandalous or prejudicial matter be stricken from a pleading.

(c) Appeals by permission. An appeal may be taken to the appellate division from any order which is not appealable as of right in an action originating in the supreme court or a county court by permission of a judge who made the order granted before application to a justice of the appellate division; or by permission of a justice of the appellate division in the department to which the appeal could be taken, upon refusal by the judge who made the order or upon direct application.

CREDIT(S)

(L.1962, c. 308. Amended L.1999, c. 281, § 2, eff. July 20, 1999.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT

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Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 63. Injunction (Refs & Annos)
§ 6313. Temporary restraining order

(a) Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time. No temporary restraining order may be granted in an action arising out of a labor dispute as defined in section eight hundred seven of the labor law, nor against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.

(b) Service. Unless the court orders otherwise, a temporary restraining order together with the papers upon which it was based, and a notice of hearing for the preliminary injunction, shall be personally served in the same manner as a summons.

(c) Undertaking. Prior to the granting of a temporary restraining order the court may, in its discretion, require the plaintiff to give an undertaking in an amount to be fixed by the court, containing terms similar to those set forth in subdivision (b) of rule 6312, and subject to the exception set forth therein.

CREDIT(S)

(L.1962, c. 308. Amended L.1962, c. 318, § 22; L.1964, c. 263, § 1; L.1982, c. 235, § 1.)

Current through L.2013, chapters 1 to 58 and 60 to 173, 176 to 188, 190 to 239, 241 to 245, 247 to 273, 275 to 327, 329 to 333.

END OF DOCUMENT