

SUPPORT

SB 249 Courts – Documentary Evidence – Protective Order Courts and Judicial Proceedings, Section 3-2C-02

Page 3, lines 7 through 22

“(a) (1) Except as provided in subsections (b) and (c) of this section, a claim shall be dismissed, without prejudice, if the claimant fails to file a certificate of a qualified expert with the court.

(2) A certificate of a qualified expert shall:

(i) Contain a statement from a qualified expert attesting that the licensed professional failed to meet an applicable standard of professional care;

(ii) Subject to the provisions of subsections (b) and (c) of this section, be filed within 90 days after the claim is filed; and

(iii) Be served on all other parties to the claim or the parties’ attorneys of record in accordance with the Maryland Rules.

*(b) (1) [Upon] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON** written request made by the claimant within 30 days of the date the claim is served, the defendant shall produce documentary evidence that would be otherwise discoverable, if the documentary evidence is reasonably necessary in order to obtain a certificate of a qualified expert.*

(2) (I) THE DEFENDANT MAY MOVE FOR A PROTECTIVE ORDER TO LIMIT THE DISCLOSURE OF DOCUMENTARY EVIDENCE REQUESTED UNDER THIS SUBSECTION TO PROTECT THE DEFENDANT FROM ANNOYANCE, EMBARRASSMENT, OPPRESSION, OR UNDUE BURDEN OR EXPENSE.

(II) ON MOTION BY THE DEFENDANT UNDER THIS PARAGRAPH, THE COURT:

1. SHALL REVIEW THE CLAIMANT’S REQUEST FOR DOCUMENTARY EVIDENCE; AND

2. FOR GOOD CAUSE SHOWN, MAY ISSUE A PROTECTIVE ORDER SPECIFYING THE DOCUMENTARY EVIDENCE THAT THE DEFENDANT IS REQUIRED TO PRODUCE.”

When a claim for damages is filed against an professional architect, engineer or surveyor (professional) the claimant must obtain a “Certificate of Merit” (certificate), to be prepared by a “qualified expert” (expert) who can certify that the professional contributed to their loss or injury by failing to meet an “applicable standard of professional care.”

If the claimant fails to obtain such a certificate, the claim is dismissed.

In seeking this certificate, a claimant is entitled to “documentary evidence” (discovery), which requires the professional to provide documents and other evidence that would be otherwise discoverable, *if* that evidence is “reasonably necessary in order to obtain a certificate of a qualified expert.”

While the evidence in question is intended to be examined by the “expert,” the request for evidence will very often come from the claimant’s attorney, often before the “expert” has been identified. An attorney, who may not know what information the expert will require, will often request information that exceeds that which is “reasonably necessary to obtain a certificate of merit from the “qualified expert.” In some situations, a professional with minimal or no connection to the claim may be overwhelmed by costly and burdensome demands for unwarranted documentation.

This bill inserts language into the law’s section on discovery that notifies both parties of an *existing protection* that allows the professional to petition the court to review a dispute involving discovery. The court will consider the professional’s objection to specific documentation that the professional contends is not “reasonably necessary in order to obtain a certificate of a qualified expert.” If the court agrees, it will exclude any documentation that would cause the professional “annoyance, embarrassment, oppression, or undue burden or expense.”