CPLR ARTICLE 31: DISCLOSURE.

"DISCLOSURE" is a term covering several means of obtaining information necessary to present a case from - or related to - an opposing party. This is separate from subpoenas as covered by Article 23.

The following classes of in individuals are subject to disclosure procedures: parties (including their employees and agents); any interested person with a defense or cause of action in the case; persons who are out-of-state, infirm, or more than 100 miles from the venue.

Attorney "work product", meaning notes and such generated by a lawyer, is privileged and exempt from disclosure.

Parties must notice each other of their intent to offer testimony of an "expert witness", that is someone not possessing specific information about the case, but rather general knowledge. Notice must include a list of all such witnesses, their qualifications, and the subject of their testimony. Notice must be provided a "reasonable time" before trial, but failure to do so does NOT prevent them from being introduced.

In medical malpractice cases, such expert witness list must also be filed with the court, and an offer made to allow other parties to examine the witness. Parties can accept or reject such offer by reply within 20 days of receiving notice. No reply = rejected.

Otherwise any other examination of expert witnesses shall only be by court order, with a showing of special circumstances, and possible liability for fees.

Parties have a right to obtain disclosure of any of their own statements in custody of another party.

Parties have the right to insurance agreements (but not the applications therefor); although these may or may not be actually admissible as evidence.

Parties have a right to accident reports; except if disclosing police reports would hinder a criminal case.

Parties have a right to inspect all audio/video/photographic evidence.

Oral depositions (or written if out-state) may be had by stipulation of parties; if before an action is commenced though - or during trial, or afterwards - ONLY by court order. Before action commences, such court order may also appoint a referee to take the testimony.

For depositions in New York related to proceedings in courts of record elsewhere,

either Supreme or County court can order disclosure.

Disclosure is permissible even in cases where the State is a party.

Protective orders may limit disclosure. Service of motion requesting issuance of protective order automatically stays disclosure.

Motion may be brought by a party OR witness - or the Court itself - to supervise disclosure. Supervision may be by a judge; a referee (including an attorney stipulated to); or a JHO (unpaid).

Referees have all the powers of a judge, EXCEPT: can't relieve themselves or appoint a successor; nor hold anyone in contempt. Motions can be made either to the Ref or the judge. Orders must be filed with the clerk if so requested by a party after deposition.

Referees' orders are reviewable by motion made within 5 days of entry; service of such motion suspends disclosure.

No service is necessary upon defaulting parties.

Parties may not be deposed until after their time to answer expires; except by leave of court. Subpoenas for non-parties to be deposed shall be served at least 20 days beforehand.

Upon a motion which stays disclosure, the "movant" (motioner) must notify the other parties.

Deposition of a prisoner is by leave of court only.

Subpoenas upon party's employee must specify the individuals title; such person can - by notice - substitute another individual having the information, at least 10 days before deposition.

Written notice for oral deposition shall be served on every party at least 20 days beforehand; include time and place, as well as name (or description) of witness, and their address. Notice need not specify matters to be examined. Notice for cross-deposition at same time/place must be made at least 10 days before.

Depositions by written questions taken out-of-state (or by stipulation) shall have the questions served with the notice. Cross-examination questions shall be served within 15 days after such notice, re-direct questions within 7, and re-cross within 5. A designated officer shall ask the questions of the witness.

In New York State a party (or their employee) can be deposed in any county where living, working, has an office, or where the action is pending. New York City shall

be considered a single county. Non-resident non-parties can also be deposed where they have been served. For Public Corporations in the county, examination shall be at the office of an employee or attorney unless stipulated elsewhere.

Errors in deposition notices are waived unless objected to at least 3 days before exam time.

Depositions may NOT be conducted by a party's attorney or employee; or by anyone who would be disqualified as a juror for reasons of consanguinity or conflicted interest [*cf* Article 41].

Depositions in NYS shall be by individual authorized to conduct oaths. Elsewhere in the US, may also be by someone allowed to acknowledge deeds. Foreign country = diplomat or armed forces office so authorized. Disqualification of administrator is waived unless raised before deposition begins, or else as soon as can reasonably be discovered. However objection to a witness need not be generally made initially.

Cross-examination shall not be limited only to what was testified to on direct examination.

Deposition may be conducted electronically (e.g. by telephone); the administrator of the oath shall be at the actual place of witness deposition, and costs shall be borne by the requesting individual.

If non-english, the party noticing the exam must pay for translation.

Witness shall read transcript of deposition, add any necessary emendations at the end, and sign. Deemed signed if not so corrected and certified within 60 days, and may not thereafter be changed.

The officer who had administered the oath then also certifies that he swore the witness, that the record is accurate, and lists all persons who appeared at the deposition. If it was a written deposition, the questions are attached. The documents are placed in a sealed envelope; and the title, index #, and name of deposed witness is written outside. This is filed with the clerk in person, or mailed (registered or certified); records are then open for inspection and copying. Filing is not necessary however if all parties stipulate, or if a copy is provided to each of them.

All exhibits must either be annexed to the deposition; OR in the alternative they can be marked as evidence, allowance given for parties to copy, then returned to the offering party, who bears the related costs. Defects or errors are ignored unless a motion to suppress is made within a reasonable time.

Depositions can be used to IMPEACH a witness; that is to counter any testimony that same person will later offer at trial. If one party causes a deposition to be had, any *adverse* party may use it as evidence. Otherwise depositions are merely to prepare for

trial, and do not substitute for the party's obligation to present evidence; however depositions of particular witnesses may be used if that person is dead, out-of-state, more than 100 miles away (unless sent away by the deposing party), aged, infirm, imprisoned, or otherwise unable to come to court.

Depositions of persons authorized to practice medicine can always be used. If one party uses part of a deposition, the rest is fair game for any other party. In case of substitution of parties, or new cases brought for the same circumstances, the deposition is still valid.

Parties can demand another's verified address, compliance due within 10 days.

Subpoenas can be issued to allow access to land or property for inspection; they must be noticed at least 20 days before, and served on ALL parties.

Physical or mental evaluation of a person - or for the purpose of establishing a blood relationship - must be noticed at least 5 days before.

Objections shall be by response, and within 20 days.

Subpoenas for medical records need to be accompanied by written authorization of the patient.

Persons served with subpoenae may notice in writing of their intent to withhold certain information; and list the type, subject, and date of such (unless that information itself is privileged).

Copies of records are okay unless otherwise directed; costs for copying by non-party are borne by the requesting individual.

"BUSINESS RECORDS": are an exception to the hearsay rule, meaning they can be introduced as evidence even if the person who made them didn't have actual knowledge of the event so recorded. Business records must be accompanied by an affidavit stating that the person provided them is the custodian; that the record is accurate; that it is complete (or alternatively, list all missing sections and the reason why); that they are made in the "regular course of business", and within a reasonable time proximate to the events depicted.

Parties shall be noticed at least 30 days in advance of the intent to introduce business records, and allowed to inspect them. Objections must be raised within 10 days thereafter.

No earlier that 20 days after service of the summons - and no later than 20 days before trial - a party can demand another to specifically admit or swear denial of certain facts, so as to eliminate the necessity to litigate those issues at trial. Admissions herein are only good for the pending action, and need not be made if concerning privileged

information of trade secrets. If a party fails to deny or assert privilege within 20 days, the facts are deemed admitted.

Penalty for failing to admit: during - or immediately after - trial a party can move for penalties to be imposed against someone who denied facts which were later proven. This is regardless of whether the moving party won or lost the case. Penalties include costs and attorney fees relating to proving the issue; and shall be decided by the Court, away from the jury.

Motion to compel compliance with disclosure can be made in the court of pendency; or also in any county where deposition was to be had, or property inspected. Penalties include: marking specific issues resolved for trial purposes; OR precluding claims, defenses, witnesses, evidence; OR striking pleadings, staying case, holding party in default, or dismissing the action.

INTERROGATORIES - or specific written questions demanding response - may also be used as a form of disclosure, and considered the same as a deposition; but NOT in matrimonial action if a Bill of Particulars was already requested, and not in a personal injury by negligence case if that party was already deposed (unless Court allows). After commencement of a divorce, an interrogatory may be used to obtain financial information from a non-party, upon notice to all parties and the interested person.

Interrogatories may only be served after a party's time to answer has expired (except with leave of court on notice); and shall be copied to all parties.

Parties served with interrogatories have 20 days to answer or object in writing and under oath. Answers must include the original questions. A corporate party shall answer by an officer or employee having the information. Answers may be amended or supplemented only by order of the court upon motion.

Disclosure of property appraisals in actions for condemnation or tax assessments shall be by rules of the Chief Administrator.