

Table of New and Retitled Sections

Volume 1

CHAPTER 3. CONSTRUCTION OF DISCOVERY STATUTES

- § 3:18 Summary proceedings involving landlord and tenant *[New]*
- § 3:19 Strategic Lawsuit Against Public Participation (SLAPP) *[New]*

CHAPTER 4. TIMING OF DISCLOSURE, GENERALLY; PRE-SUIT OR POST-TRIAL ISSUES

- § 4:1.50 Special issues relating to punitive damages *[New]*
- § 4:8.50 Waiver of right to seek further discovery *[New]*
- § 4:15 Effect of summary judgment motion on discovery, generally
[Retitled]

CHAPTER 5. AMENDING OR SUPPLEMENTING DISCLOSURE RESPONSES

- § 5:2.50 Effect of amendment of disclosure on need for, or right to, additional discovery *[New]*

CHAPTER 6. COSTS OF DISCOVERY

- § 6:2.50 Of service by publication *[New]*

CHAPTER 7. IN GENERAL

- § 7:5.50 Practical considerations regarding drafting and scope *[New]*
- § 7:10 Personal injury, injury to property, wrongful death claims
based on negligence *[New]*
- § 7:11 Special proceedings *[New]*

CHAPTER 8. ORAL DEPOSITION

- § 8:17.50 Nonparties, generally—Opposing counsel *[New]*
- § 8:24.50 Minors; infants; children *[New]*
- § 8:33.50 Generally; Uniform Act *[New]*
- § 8:33.60 Definitions; what constitutes out-of-state subpoena *[New]*
- § 8:33.70 Request to New York court to issue domestic subpoena *[New]*
- § 8:33.75 Form and content of subpoena *[New]*

- § 8:33.80 Service *[New]*
- § 8:33.90 Construction and effect; enforcement *[New]*
- § 8:50.50 Deposition by telephone—Videoconference *[New]*
- § 8:80 Effect of refusal or failure to appear *[New]*

CHAPTER 9. PRODUCTION OF DOCUMENTS OR THINGS AT DEPOSITION

- § 9:8 Out-of-state actions seeking to enforce in-state notice to produce *[New]*

CHAPTER 10. DEPOSITION ON WRITTEN QUESTIONS

- § 10:2.50 In-state depositions—Out-of-state actions seeking to enforce in-state notice to produce *[New]*
- § 10:14.50 Use of deposition answers at trial—Affirmation by person physically outside of U.S. or its territories *[New]*

CHAPTER 11. INTERROGATORIES

- § 11:16.50 When additional sets of interrogatories are warranted *[New]*
- § 11:16.70 Supplementation of interrogatories or subsequent service of additional interrogatories; in response to answers to interrogatories *[New]*
- § 11:20.50 Inadequate answers to interrogatories; objection to answers *[New]*

CHAPTER 12. NOTICE TO PRODUCE FOR INSPECTION

- § 12:25.40 Items within possession, custody, or control, generally—What constitutes possession, custody, or control; existing items—Duty to preserve items where litigation is anticipated *[New]*
- § 12:25.50 Items within possession, custody, or control, generally—Failure or refusal to produce; asserting document does not exist *[New]*
- § 12:32.50 Computers; communications and data storage devices; digital, internet, electronic, and computer data *[New]*
- § 12:32.60 Computers; communications and data storage devices; digital, internet, electronic and computer data—Social networking site content *[New]*
- § 12:33.50 Time for completion of action; placing limits on availability *[New]*
- § 12:34.50 Copying—Cloning hard drive; duplication of computer data *[New]*

TABLE OF NEW AND RETITLED SECTIONS

**CHAPTER 15. PHYSICAL OR MENTAL
EXAMINATION; EXCHANGE OF
MEDICAL REPORTS**

- § 15:6.50 Effect of failure to appear for examination *[New]*
- § 15:6.60 Post-injury, pre-IME changes to physical condition; non-emergency surgery as “spoliation” *[New]*
- § 15:12.50 Waiver of right to examine adverse party; effect of supplemental bill of particulars *[New]*
- § 15:23.50 Particular condition as in controversy—Other particular conditions; family history of particular condition *[New]*
- § 15:41.50 Other third parties *[New]*
- § 15:68.50 Use of stipulation to disclose *[New]*

**CHAPTER 17. DISCOVERY ASPECTS OF
BILLS OF PARTICULARS**

- § 17:13.50 Sufficiency of response, generally; mandating supplementation of response *[New]*

**CHAPTER 18. EXPERT WITNESS
DISCLOSURE**

- § 18:11.50 Sufficiency of response; mandating supplementation of response *[New]*
- § 18:16.50 Effect of special circumstances on scope of expert disclosure *[New]*

**CHAPTER 19. MISCELLANEOUS
DISCOVERY DEVICES AND
DISCLOSURES**

- § 19:3.50 Contents of insurance agreement—Certification of insurance disclosure *[New]*
- § 19:11 Witness identity *[New]*
- § 19:12 Hague Convention *[New]*

CHAPTER 20. WHO MUST DISCLOSE

- § 20:6.50 Imposing special conditions upon disclosure by nonparty *[New]*
- § 20:11.50 Former agents, former employees, or other persons formerly under party’s control *[New]*

**CHAPTER 22. WHAT MUST BE DISCLOSED,
GENERALLY**

- § 22:3.50 Duty of parties to preserve evidence *[New]*
- § 22:21.30 Accident reports mandated by statute *[New]*
- § 22:21.70 Highway repair; plans for repair *[New]*
- § 22:26 Right to claim; identity of parties *[Retitled]*

- § 22:26.50 Jurisdiction and related matters; citizenship; domicile
[New]
- § 22:27.50 Other related matters; arbitration proceedings; content of
other proceedings *[New]*
- § 22:30.50 Professional malpractice or incompetence *[New]*
- § 22:32.50 Assets; debt owed to party *[New]*
- § 22:34 Income and assets; investments *[Retitled]*
- § 22:39.50 Lending records; loans; securitization *[New]*
- § 22:42.50 Parties; class members *[New]*
- § 22:46 Damages; mitigation *[Retitled]*
- § 22:47 Employment records or information; agency status
[Retitled]
- § 22:49.50 Governmental records; regulatory and investigative records
[New]
- § 22:50.50 Immigration status *[New]*
- § 22:51.50 Occupancy of property; leasehold interests and rights *[New]*
- § 22:53.50 Rental of property; leasehold; improvements; nonpayment
of rent *[New]*
- § 22:54 Reputation; criminal record; reports of unethical or
criminal conduct *[Retitled]*
- § 22:55.50 Telephone and cell phone records *[New]*
- § 22:55.60 Computer data and online social network data *[New]*
- § 22:55.70 Video, audio, and other visual or sound representations
[New]

CHAPTER 23. PRIVILEGE, IN GENERAL

- § 23:2.50 Protection of information distinguished—Confidentiality
agreements *[New]*
- § 23:9.50 Manner of determination; in cameral review of evidence to
determine if privileged *[New]*
- § 23:10.50 Degree of immunity from disclosure based on particular
privilege *[New]*
- § 23:15.50 Exceptions to privilege; corporate fiduciary exception *[New]*
- § 23:22.50 Burden of proof that privilege applies *[New]*
- § 23:37.50 Priest-penitent privilege *[New]*
- § 23:41.50 Rape crisis counselor privilege *[New]*
- § 23:41.60 Remedial measures; subsequent repairs *[New]*
- § 23:41.70 Sealed court records; Child Protective Services files *[New]*
- § 23:43.30 Law enforcement privilege *[New]*
- § 23:43.70 Whistleblowers or other informants regarding
wrongdoing—Presumption of confidentiality of complaint
[New]
- § 23:43.90 Other miscellaneous statutory and common-law privileges
[New]

CHAPTER 24. ATTORNEY WORK PRODUCT

- § 24:7.50 Experts retained as consultants to prepare case *[New]*
- § 24:8.50 Particular documents as within attorney work product
privilege—“Litigation holds” *[New]*

TABLE OF NEW AND RETITLED SECTIONS

- § 24:14.50 Waiver of privilege—“Common interest” and “at issue” waiver *[New]*

CHAPTER 25. MATERIALS PREPARED IN ANTICIPATION OF LITIGATION

- § 25:15.50 Expert’s report—Observer present during examination *[New]*
§ 25:23.50 Text messages with counsel *[New]*

CHAPTER 26. SPECIAL SCOPE AND PRIVILEGE ISSUES

- § 26:9 Generally *[New]*
§ 26:10 Security of computerized data, generally *[New]*
§ 26:11 Protection of computerized or electronic communications as speech *[New]*
§ 26:12 Risk of damage to operating system or hard drive as reason to limit or bar discovery *[New]*
§ 26:13 Accessing computer drives and storage media; who may conduct inspection, examination, or copying functions *[New]*
§ 26:14 Drafting discovery requests regarding electronic, computerized, or internet information *[New]*

Volume 2

CHAPTER 27. JUDICIAL INVOLVEMENT IN DISCOVERY, IN GENERAL; PRETRIAL SCHEDULING

- § 27:6.50 Effect of other orders on court’s authority regarding disclosure *[New]*
§ 27:9 Preliminary or pretrial conference—Particular court rules; particular types of proceedings *[Retitled]*
§ 27:11.50 Preliminary or pretrial conferences—Particular types of actions; matrimonial actions—Mortgage foreclosures; documentary disclosures required *[New]*
§ 27:12.50 Discovery and disclosure orders; compliance; termination of discovery *[New]*
§ 27:19 Resolution of discovery dispute; extension of time to complete *[New]*
§ 27:20 Ordering additional discovery *[New]*
§ 27:21 Preserving objections *[New]*

CHAPTER 28. PRECLUDING DISCOVERY; PROTECTIVE ORDERS

- § 28:20.50 Demand as seeking to embarrass person from whom disclosure is sought *[New]*

- § 28:34.50 Limiting or conditioning use of information obtained,
generally *[New]*
- § 28:44.50 Appointing counsel for witness *[New]*
- § 28:51 Precluding testimony or introduction of evidence *[Retitled]*
- § 28:52 Granting witness immunity from civil suit *[New]*
- § 28:53 Bifurcating or staying discovery pending resolution of other
issues *[New]*

CHAPTER 29. COMPELLING DISCOVERY

- § 29:5.50 What may be compelled—Initial in camera review to set
scope of materials to be disclosed *[New]*

CHAPTER 30. EFFECT OF FAILURE TO DISCLOSE; SANCTIONS

- § 30:11.50 Affirmation of good faith by movant *[New]*
- § 30:12.50 Procedure to challenge; order as appealable *[New]*
- § 30:29.50 Good faith effort to comply or resolve dispute—Lack of bad
faith in failure to comply *[New]*
- § 30:30.50 Failure to exhaust other sources of disclosure to obtain
same facts—Failure to establish that disclosure was sole
source of evidence *[New]*
- § 30:32.50 Law office failure *[New]*
- § 30:41 Mistrial; vacatur of judgment *[Retitled]*
- § 30:41.50 Striking action from trial calendar *[New]*
- § 30:41.60 Special issues involving class actions and class status
[New]
- § 30:50.50 Striking pleading—Need to warn before imposing sanction
[New]
- § 30:50.60 Striking answer—When not warranted *[New]*

CHAPTER 32. LAW OFFICE MANAGEMENT AND ORGANIZATIONAL ISSUES

- § 32:8.50 Working with clients to preserve disclosable information
[New]

CHAPTER 33. CHECKLISTS

- § 33:5 Introductory comments *[New]*
- § 33:6 Injury to property from negligent construction on neighboring
parcel *[New]*
- § 33:7 Checklists regarding personal injury—Injury to human by
defendants dog *[New]*
- § 33:8 Checklists regarding personal injury—Litigating insurance
coverage *[New]*
- § 33:9 Checklists regarding personal injury—Personal injuries from
automobile accident *[New]*
- § 33:10 Checklists regarding personal injury—Strict liability for defec-
tive product *[New]*

TABLE OF NEW AND RETITLED SECTIONS

- § 33:11 Checklists regarding personal injury—Action against municipality or other public entity for defective sidewalk *[New]*
- § 33:12 Checklists regarding divorce and separation—Action for breach of property settlement agreement *[New]*

CHAPTER 34. DEPOSITIONS

- § 34:4.50 Notice of examination pursuant to General Municipal Law *[New]*
- § 34:8.50 Pretrial order provision binding party to witness deposition testimony *[New]*
- § 34:10.50 Real estate—Broker liability—Failure to disclose murder, haunting, or other stigmatizing characteristic of property to prospective purchaser *[New]*
- § 34:11.50 Environmental/pollution damage—Hydrofracking action—Deposition; illustrative questions by defendant to plaintiff *[New]*
- § 34:12 Computer or internet-based information *[New]*
- § 34:13 Sexual orientation or gender identity discrimination—Sample deposition questions—Employer’s executive or managerial representative *[New]*
- § 34:14 Sexual orientation or gender identity discrimination—Sample deposition questions—Employee’s supervisor *[New]*
- § 34:15 Sexual orientation or gender identity discrimination—Sample deposition questions—Employee accused of harassment or discriminatory conduct *[New]*
- § 34:16 Transfer of property by attorney in fact—Defense of attorney in fact from challenge by non-grantor plaintiff *[New]*
- § 34:17 Pattern deposition checklist—Last injurious exposure rule—Claimant to employer *[New]*
- § 34:18 Sample deposition checklist—Insurance territorial clause case *[New]*
- § 34:19 Sample deposition questions—Litigating small business administration social or economic disadvantaged business cases *[New]*
- § 34:20 Sample deposition questions—Putative joint employer under Fair Labor Standards Act *[New]*
- § 34:21 Sample deposition questions—Standing to seek dissolution of LLC *[New]*
- § 34:22 Sample deposition questions—Statute of limitations issues *[New]*

CHAPTER 35. NOTICE TO PRODUCE FOR DISCOVERY AND INSPECTION IN CONNECTION WITH DEPOSITION

- § 35:3 Particular provisions—Demand for discovery and inspection—Fair Labor Standards Act action *[New]*

- § 35:4 Particular provisions—Demand for discovery and inspection—Action on covenant not to compete—For disclosure by former employer *[New]*
- § 35:5 Sample defense demand to produce for discovery and inspection—Defense of attorney in fact from challenge to exercise of power *[New]*
- § 35:6 Sample notice to produce for discovery and inspection—UCC Security Agreement and Financing Statement *[New]*
- § 35:7 Notice to produce—UCC Financing statement litigation *[New]*
- § 35:8 Notice to produce—By putative joint employer—Joint employer status under Fair Labor Standards Act *[New]*
- § 35:9 Airport noise—Notice to produce; Notice to enter onto land or other property *[New]*
- § 35:10 Sample notice to produce—Demands relevant to application of limitations period *[New]*

CHAPTER 37. INTERROGATORIES

- § 37:6 Computer program and system of records *[New]*
- § 37:7 Website presence *[New]*
- § 37:8 Particular provisions—Continuing nature of interrogatories *[New]*
- § 37:9 Particular provisions—Definitions and construction of questions posed *[New]*
- § 37:10 Pretrial order provision incorporating damage claims as set forth in interrogatory answers *[New]*
- § 37:11 Sample interrogatories—Last injurious exposure cases—Occupational disease *[New]*
- § 37:12 Sample interrogatories—UCC security agreement and financing statement litigation *[New]*
- § 37:13 Sample interrogatories—UCC Financing statement litigation *[New]*
- § 37:14 Sample interrogatories—Standing to seek dissolution of LLC *[New]*
- § 37:15 Sample interrogatories—Pertaining to application of limitations period *[New]*
- § 37:16 Sample interrogatories—False Claims Act *[New]*

CHAPTER 38. NOTICE TO PRODUCE FOR DISCOVERY AND INSPECTION

- § 38:2.50 Demand for discovery and inspection—By defendant against plaintiff—School bullying case *[New]*
- § 38:2.60 Demand for discovery and inspection—Sexual orientation or gender identity harassment *[New]*
- § 38:2.70 Demand for discovery and inspection—Fair Labor Standards Act action *[New]*
- § 38:2.80 Demand for discovery and inspection—Action on covenant not to compete—For disclosure by former employer *[New]*
- § 38:6 Notice to produce computer records *[New]*
- § 38:6.30 Notice to produce—Claim of easement by necessity to prevent flooding *[New]*

TABLE OF NEW AND RETITLED SECTIONS

- § 38:6.40 Notice to produce—Claim against hospice *[New]*
- § 38:6.50 Notice to produce—Vapor intrusion case *[New]*
- § 38:6.60 Notice to produce—Forced institutionalization claim *[New]*
- § 38:7 Website presence *[New]*
- § 38:8 Sample demand—“Last injurious exposure” cases in workers’ compensation *[New]*
- § 38:9 Sample demand to produce for discovery and inspection—Claim under Migrant and Seasonal Agricultural Worker Protection Act *[New]*
- § 38:10 Sample notice to produce *[New]*
- § 38:11 Sample demand to produce for discovery and inspection—Litigation of claims for disaster relief *[New]*
- § 38:12 Sample application for disclosure of grand jury documents in civil—False Claims Act action *[New]*
- § 38:13 Notice of motion to compel production of statements of witnesses—State *[New]*
- § 38:14 Motion for the production of witness interview notes—State *[New]*
- § 38:15 Civil action for police use of excessive force—Request for production of documents by plaintiff to state or municipal defendants *[New]* *[New]*

CHAPTER 39. NOTICE TO ADMIT

- § 39:6 Pretrial order confirming facts admitted by parties *[New]*
- § 39:7 Pretrial order—Provision—Personal injury action—Agency admitted *[New]*
- § 39:8 Sample request for admissions—Civilian Board of Contract Appeals *[New]*
- § 39:9 Sample request for admissions—False Claims Act *[New]*

CHAPTER 41. PHYSICAL OR MENTAL EXAMINATION

- § 41:3 Medical release of records *[New]*
- § 41:4 Release of medical records (New York Official Form) *[New]*

CHAPTER 43. BILLS OF PARTICULARS

- § 43:2 Model demand by principal for bill of particulars *[New]*
- § 43:3 Motion for bill of particulars *[New]*
- § 43:4 Bill of particulars—Arrest *[New]*

CHAPTER 45. OTHER PARTICULAR DISCLOSURE DEVICES

- § 45:3 Student records—Release and authorization *[New]*
- § 45:4 Sample FOIL request—School district records and policies *[New]*
- § 45:5 Notice to enter onto plaintiff’s land for discovery and inspection *[New]*

- § 45:6 Notice to enter onto plaintiff's land for discovery and inspection—Vapor intrusion *[New]*

CHAPTER 46. DISCLOSURE MOTIONS

- § 46:10.50 Sample protective order—Civilian Board of Contract Appeals *[New]*
- § 46:10.60 Sample notice of motion—In limine—By defendant police officer—To exclude evidence of other instances of officer's use of excessive force *[New]*
- § 46:10.70 Sample motion—In limine—By defendant police officer—To exclude evidence of other instances of officer's use of excessive force *[New]*
- § 46:14.50 Provisions regarding compelling disclosure of computer records *[New]*
- § 46:28.50 Affidavit in opposition to motion for sanction—Good faith effort *[New]*
- § 46:36 Stipulation as to admissibility *[New]*
- § 46:37 Affidavit of custodian of business records for authentication; sample affidavit *[New]*

CHAPTER 47. LAW OFFICE MANAGEMENT FORMS

- § 47:8 Sample intake questionnaire—Hospice liability claim *[New]*
- § 47:9 Sample site investigation form—Flooding of neighboring property *[New]*
- § 47:10 Sample intake questionnaire—Forced institutionalization claim *[New]*