

CPLR 3101(e): Plaintiff Entitled to Obtain a Copy of Defendants' Statement When Incorporated by Reference in His Own Statement

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CPLR 3101(e): Plaintiff entitled to obtain a copy of defendants' statement when incorporated by reference in his own statement.

Under CPLR 3101(e), a party may obtain his own statements without the burden of showing or proving those special circumstances¹⁴⁷ required by prior case law.¹⁴⁸

In *Masone v. Paull*,¹⁴⁹ defendants' insurer obtained a written statement from the plaintiff. Within his statement, the plaintiff stated that he had read the defendants' statements and agreed with them. In considering plaintiff's motion to compel defendants to furnish her copies of their statements, the court noted that ordinarily these statements would be considered material prepared for litigation and, thus, conditionally privileged from disclosure under CPLR 3101(d) (2).

In granting plaintiff's motion, the court held that a party is entitled to a copy of his *complete* statement. In this instance, plaintiff was entitled to a copy of defendants' statements since they were incorporated by reference in his statement.

Thus, CPLR 3101(e) creates another exception to the rule of CPLR 3101(d) that material prepared for litigation is not discoverable.

CPLR 3106(b): Subpoena must be served to obtain deposition from agent or non-party witness.

Under prior law, a party to an action desiring to take a deposition was only required to give reasonable notice to his adversary or to the adversary's attorney.¹⁵⁰ CPLR 3106(b) now provides that when the person to be examined is a non-party witness, agent, or prior holder of a claim, he must be served with a subpoena before the examination.

In *Spector v. Antenna & Radome Research Associates Corp.*,¹⁵¹ plaintiff, seeking to examine an independent accountant retained by defendant, served a notice to take the accountant's deposition on defendant's counsel. He did not, however, serve a subpoena on the accountant. The appellate division held that the clear lan-

¹⁴⁷ 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶3101.56 (1965).

¹⁴⁸ E.g., *Sacks v. Greyhound Corp.*, 18 App. Div. 2d 747, 235 N.Y.S.2d 669 (3d Dep't 1962); *Palmer v. Liberty Mut. Life Ins. Co.*, 36 Misc. 2d 325, 232 N.Y.S.2d 439 (Sup. Ct. Steuben County 1962). See CPA § 324.

¹⁴⁹ 48 Misc. 2d 939, 266 N.Y.S.2d 317 (Sup. Ct. Queens County 1965).

¹⁵⁰ CPA § 290. See also RCP 121-a which limited the taking of testimony by deposition upon notice to parties in an action, their agents or employees. Witnesses are not within the purview of such section. *Augenblick v. Augenblick*, 203 Misc. 360, 117 N.Y.S.2d 69 (Sup. Ct. Queens County 1952).

¹⁵¹ 25 App. Div. 2d 569, 267 N.Y.S.2d 843 (2d Dep't 1966).