

# CPLR 3101: Liberalization of Disclosure in Matrimonial Actions

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the claimant in an appropriation proceeding had ignored a demand by the State for a bill of particulars. In the exercise of its discretion, the court granted the claimant's motion to vacate the order, on condition that the attorney personally remit one hundred dollars to the State. It took this course "in order to point up [its] aversion to claimant's counsel's lack of attention to his responsibilities . . . and . . . to discourage such neglectful conduct in the future."<sup>99</sup>

#### ARTICLE 31 — DISCLOSURE

##### *CPLR 3101: Liberalization of disclosure in matrimonial actions.*

In *Lachoff v. Lachoff*,<sup>100</sup> the Supreme Court, Nassau County, granted the defendant-husband's motion for disclosure proceedings against his plaintiff-wife. While the policy has been to deny disclosure in matrimonial actions, on the theory that such examination may impede or prevent reconciliation,<sup>101</sup> the court reasoned that the 1967 revisions of the DRL<sup>102</sup> requiring the parties to go through a conciliation procedure at the outset of matrimonial actions made this theory obsolete.<sup>103</sup> The court abandoned the rule which allowed pretrial disclosure in matrimonial actions only upon a showing of "special circumstances," and followed<sup>104</sup> the liberal approach<sup>105</sup> which permits such disclosure unless the opposing party is able to show circumstances which would render it improper.<sup>106</sup>

*Lachoff* goes beyond *Hochberg v. Hochberg*,<sup>107</sup> which allowed disclosure of financial matters in matrimonial actions. The instant decision is a positive step toward granting parties in matrimonial actions the same rights as those in other actions.

<sup>99</sup> *Id.* at 491, 330 N.Y.S.2d at 143, citing *Maglieri v. Saks*, 33 App. Div. 2d 898, 306 N.Y.S.2d 479 (1st Dep't 1970); *Breazeal v. Rent-A-Car Club of America*, 32 App. Div. 2d 653, 300 N.Y.S.2d 812 (2d Dep't 1969); *Boyle v. Krebs & Schulz Motors, Inc.*, 18 App. Div. 2d 1010, 239 N.Y.S.2d 143 (2d Dep't 1963); 7B MCKINNEY'S CPLR 3042, supp. commentary at 269-70 (1970).

<sup>100</sup> 69 Misc. 2d 512, 330 N.Y.S.2d 227 (Sup. Ct. Nassau County 1972) (mem.).

<sup>101</sup> See 7B MCKINNEY'S CPLR 3101, commentary at 18-19 (1970).

<sup>102</sup> DRL 215. See *Hunter v. Hunter*, 10 App. Div. 2d 291, 198 N.Y.S.2d 1008 (1st Dep't 1960).

<sup>103</sup> 69 Misc. 2d at 512, 330 N.Y.S.2d at 229.

<sup>104</sup> *Id.*, 330 N.Y.S.2d at 230.

<sup>105</sup> See *Plancher v. Plancher*, 35 App. Div. 2d 417, 317 N.Y.S.2d 140 (2d Dep't 1970), *aff'd mem.*, 29 N.Y.2d 880, 278 N.E.2d 650, 328 N.Y.S.2d 444 (1972); *Dunlap v. Dunlap*, 34 App. Div. 2d 889, 312 N.Y.S.2d 441 (4th Dep't 1970) (mem.) (disclosure of all relevant matters); *Campbell v. Campbell*, 7 App. Div. 2d 1011, 184 N.Y.S.2d 479 (2d Dep't 1957).

<sup>106</sup> CPLR 3101(b).

<sup>107</sup> 63 Misc. 2d 77, 310 N.Y.S.2d 737 (Sup. Ct. Nassau County 1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 342, 356 (1970).