CPLR 3102(f): Disclosure Not Available When State Is Non-Party Witness

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terms when deciding disclosure motions and will deny them only where the information sought is totally useless, irrelevant or immaterial.

CPLR 3102(f): Disclosure not available when state is non-party witness.

Prior to the enactment of the CPLR disclosure was not available against the state in any court. With the enactment of the CPLR, disclosure against the state became available, first, in the Court of Claims by order of that court, and subsequently, by court order, in any action in which the state was properly a party. This liberal trend in favor of private litigants has, to some extent, remedied an unjust situation which previously existed.

CPLR 3102(f) presently provides that “[i]n an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person, except that it may be obtained only by order of the court in which the action is pending....” In Butironi v. Putnam County Civil Service Comm’n, plaintiff sought disclosure against the state as a non-party witness. The court held that disclosure under 3102(f) was not available in such circumstances. Hopefully, a second liberalization process will begin with respect to disclosure against the state in actions where it is a non-party witness.

CPLR 3120(b): Court disallows non-party’s disclosure expenses temporarily.

CPLR 3120(b) provides for the discretionary allowance of costs and for the defrayal of expenses of a non-party who is ordered to make disclosure. In a recent case, In re Stauderman’s Will, the surrogate’s court, Nassau County, disallowed a non-