

CPLR 3101(a): "Evidence in Chief" Doctrine Does Not Limit CPLR 3111

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CPLR 3101(a): "Evidence in chief" doctrine does not limit CPLR 3111.

Although CPLR 3101(a) sets forth the general disclosure guidelines—full disclosure of all evidence material and necessary—CPLR 3111 states that a notice may require the production of "books, papers and other things" and CPLR 3120 provides that such things must be set forth with reasonable particularity. Even though there is no express cross-reference between these sections, one commentator has stated that "the rules which govern what may be a proper subject for examination before trial under CPLR 3101 also determine what documents must be produced for use at an examination under CPLR 3111."¹²⁷ Therefore, it appears that where the material desired falls within the scope of an exclusionary provision of CPLR 3101, the court will not allow discovery, since 3101 should control.

In *Rutherford v. Albany Medical Center Hosp.*,¹²⁸ the court was expressly confronted with the interplay of 3101 and 3111, and held that 3101 was controlling. However, in reaching its decision, the court seemed to isolate itself from prior New York rulings which held that documents which are to be produced for discovery and inspection must be admissible as evidence at the trial.¹²⁹ The court stated that "the mere fact that documents may be inadmissible at the trial as evidence in chief should not prevent their disclosure at pretrial examination."¹³⁰

The reasoning of this case together with the reasoning adopted by the court in *West v. Aetna Cas. & Sur. Co.*,¹³¹ seems to indicate a liberalizing trend as to what material should be available on pre-trial examinations. As a result, it appears that the barrier erected by the courts under pre-CPLR cases is slowly disintegrating and that all evidence not excluded under CPLR 3101(b)-(d) will be available for discovery and inspection.

CPLR 3101(a): Names of witnesses may be obtained on disclosure.

Previously, it was believed that *Rios v. Donovan*¹³² had held that witnesses' names and addresses were a proper subject of in-

¹²⁷ 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3111.04 (1965).

¹²⁸ 48 Misc. 2d 1017, 266 N.Y.S.2d 470 (Sup. Ct. Albany County 1965).

¹²⁹ See, e.g., *People ex rel. Lemon v. Supreme Court*, 245 N.Y. 24, 156 N.E. 84 (1927); *Peters v. Marquez*, 21 Misc. 2d 720, 196 N.Y.S.2d 840 (Sup. Ct. Westchester County 1959).

¹³⁰ *Rutherford v. Albany Medical Center Hosp.*, 48 Misc. 2d 1017, 1019, 266 N.Y.S.2d 470, 473 (Sup. Ct. Albany County 1965).

¹³¹ 49 Misc. 2d 28, 266 N.Y.S.2d 600 (Sup. Ct. Onondaga County 1965).

¹³² 21 App. Div. 2d 409, 250 N.Y.S.2d 818 (1st Dep't 1964).