ARTICLE 23

SUBPOENAS, OATHS AND AFFIRMATIONS

2301. Scope of subpoena.

2302. Authority to issue.

(a) Without court order.

(b) Issuance by court.

2303. Service of subpeona; payment of fees in advance.

2303-a. Service of a trial subpoena.

2304. Motion to quash, fix conditions or modify.

2305. Attendance required pursuant to subpoena; possession of books, records, documents or papers.

(a) When person required to attend.

(b) Subpoena duces tecum; attendance by substitute.

(c) Inspection, examination and audit of records.

2306. Hospital records; medical records of department or bureau of a municipal corporation or of the state.

(a) Transcript or reproduction.

(b) Delivery to clerk.

2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state.

2308. Disobedience of subpeona.

(a) Judicial.

(b) Non-judicial.

(c) Review of proceedings.

2309. Oaths and affirmations.

(a) Persons authorized to administer.

(b) Form.

(c) Oaths and affirmations taken without the state.

(d) Form of certificate of oath or affirmation administered by officer of the armed forces of the United States.

§ 2301. Scope of subpoena. A subpoena requires the attendance of a person to give testimony. A subpoena duces tecum requires production of books, papers and other things. A child support subpoena is a subpoena issued pursuant to section one hundred eleven-p of the social services

law by the office of temporary and disability assistance or a local social services district, or its authorized representative, or another state's child support enforcement agency governed by title IV-D of the social security act. A trial subpoena duces tecum shall state on its face that all papers or other items delivered to the court pursuant to such subpoena shall be accompanied by a copy of such subpoena.

§ 2302. Authority to issue. (a) Without court order. Subpoenas may be issued without a court order by the clerk of the court, a judge where there is no clerk, the attorney general, an attorney of record for a party to an action, an administrative proceeding or an arbitration, an arbitrator, a referee, or any member of a board, commission or committee authorized by law to hear, try or determine a matter or to do any other act, in an official capacity, in relation to which proof may be taken or the attendance of a person as a witness may be required; provided, however, that a subpoena to compel production of a patient's clinical record maintained pursuant to the provisions of section 33.13 of the mental hygiene law shall be accompanied by a court order. A child support subpoena may be issued by the department, or the child support enforcement unit coordinator or support collection unit supervisor of a social services district, or his or her designee, or another state's child support enforcement agency governed by title IV-D of the social security act.

(b) Issuance by court. A subpoena to compel production of an original record or document where a certified transcript or copy is admissible in evidence, or to compel attendance of any person confined in a penitentiary or jail, shall be issued by the court. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the person having custody of the record, document or person confined. A subpoena to produce a prisoner so confined shall be issued by a judge to whom a petition for habeas corpus could be made under subdivision (b) of section seven thousand two of this chapter or a judge of the court of claims, if the matter is pending before the court of claims, or a judge of the surrogate's court, if the matter is pending before the surrogate's court, or a judge or support magistrate of the family court, if the matter is pending before the family court, or a

judge of the New York city civil court, if the matter is pending before the New York city civil court and it has been removed thereto from the supreme court pursuant to subdivision (d) of section three hundred twenty-five of this chapter. In the absence of an authorization by a patient, a trial subpoena duces tecum for the patient's medical records may only be issued by a court.

§ 2303. Service of subpoena; payment of fees in advance. (a) A subpoena requiring attendance or a subpoena duces tecum shall be served in the same manner as a summons, except that where service of such a subpoena is made pursuant to subdivision two or four of section three hundred eight of this chapter, the filing of proof of service shall not be required and service shall be deemed complete upon the later of the delivering or mailing of the subpoena, if made pursuant to subdivision two of section three hundred eight of this chapter, or upon the later of the affixing or mailing of the subpoena, if made pursuant to subdivision four of section three hundred eight of this chapter. Any person subpoenaed shall be paid or tendered in advance authorized traveling expenses and one day's witness fee. A copy of any subpoena duces tecum served in a pending civil judicial proceeding shall also be served, in the manner set forth in rule twenty-one hundred three of this chapter, on each party who has appeared in the civil judicial proceeding so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things.

(b) A child support subpoena issued pursuant to section one hundred eleven-p of the social services law to public utility companies and corporations, including but not limited to cable television, gas, electric, steam, and telephone companies and corporations, as defined in section two of the public service law, may be served by regular mail, or through an automated process where information sought is maintained in an automated data base. All other child support subpoenas issued pursuant to section one hundred eleven-p of the social services law shall be served in accordance with the provisions of subdivision (a) of this section.

§ 2303-a. Service of a trial subpoena. Where the attendance at trial of a party or person within the party's control can be compelled by a trial subpoena, that subpoena may be served by delivery in accordance with subdivision (b) of rule 2103 to the party's attorney of record.

§ 2304. Motion to quash, fix conditions or modify. A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable. If the subpoena is not returnable in a court, a request to withdraw or modify the subpoena shall first be made to the person who issued it and a motion to quash, fix conditions or modify may thereafter be made in the supreme court; except that such motion with respect to a child support subpoena issued pursuant to section one hundred eleven-p of the social services law shall be made to a judge of the family court or the supreme court. Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify.

§ 2305. Attendance required pursuant to subpoena; possession of books, records, documents or papers. (a) When person required to attend. A subpoena may provide that the person subpoenaed shall appear on the date stated and any recessed or adjourned date of the trial, hearing or examination. If he is given reasonable notice of such recess or adjournment, no further process shall be required to compel his attendance on the adjourned date. At the end of each day's attendance, the person subpoenaed may demand his fee for the next day on which he is to attend. If the fee is not then paid, he shall be deemed discharged.

(b) Subpoena duces tecum; attendance by substitute. 1. A subpoena duces tecum may be joined with a subpoena to testify at a trial, hearing or examination or may be issued separately.

2. Any person may comply with a subpoena duces tecum for a trial, hearing or examination by having the requisite books, documents or things produced by a person able to identify them and testify respecting their origin, purpose and custody.

(c) Inspection, examination and audit of records. Whenever by statute

any department or agency of government, or officer thereof, is authorized to issue a subpoena requiring the production of books, records, documents or papers, the issuing party shall have the right to the possession of such material for a period of time, and on terms and conditions, as may reasonably be required for the inspection, examination or audit of the material. The reasonableness of such possession, time, terms, and conditions shall be determined with consideration for, among other things, (i) the good cause shown by the issuing party, (ii) the rights and needs of the person subpoenaed, and (iii) the feasibility and appropriateness of making copies of the material. The cost of reproduction and transportation incident thereto shall be borne by the person or party issuing the subpoena unless the court determines otherwise in the interest of justice.

(d) Subpoena duces tecum for a trial; service of subpoena and delivery for records. Where a trial subpoena directs service of the subpoenaed documents to the attorney or self-represented party at the return address set forth in the subpoena, a copy of the subpoena shall be served upon all parties simultaneously and the party receiving such subpoenaed records, in any format, shall deliver a complete copy of such records in the same format to all opposing counsel and self-represented parties where applicable, forthwith.

§ 2306. Hospital records; medical records of department or bureau of a municipal corporation or of the state. (a) Transcript or reproduction. Where a subpoena duces tecum is served upon a hospital, or upon a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of records relating to the condition or treatment of a patient, a transcript or a full-sized legible reproduction, certified as correct by the superintendent or head of the hospital, department or bureau or his assistant, or the officer, may be produced unless otherwise ordered by a court. Such a subpoena shall be served at least three days before the time fixed for the production of the records unless otherwise ordered by a court.

(b) Delivery to clerk. Where a court has designated a clerk to receive records described in subdivision (a), delivery may be made to him at or before the time fixed for their production. The clerk shall give a

receipt for the records and notify the person subpoenaed when they are no longer required. The records shall be delivered in a sealed envelope indicating the title of the action, the date fixed for production and the name and address of the attorney appearing on the subpoena. They shall be available for inspection pursuant to the rules or order of the court.

§ 2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state. Issuance by court. A subpoena duces tecum to be served upon a library, or a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the library, department, bureau or officer having custody of the book, document or other thing and the adverse party. Such subpoena must be served upon such library, or such department or bureau of such municipal corporation or of the state or an officer having custody of the book, document or other thing and the adverse party at least twenty-four hours before the time fixed for the production of such records unless in the case of an emergency the court shall by order dispense with such notice otherwise required. Compliance with a subpoena duces tecum may be made by producing a full-sized legible reproduction of the item or items required to be produced certified as complete and accurate by the person in charge of such library, department or bureau, or a designee of such person, and no personal appearance to certify such item or items shall be required of such person or designee, unless the court shall order otherwise pursuant to subdivision (d) of rule 2214 of this chapter. Where a stipulation would serve the same purpose as production of the book, document or other thing and the subpoena is required because the parties will not stipulate, the judge may impose terms on any party, including the cost of production of the book or document, and require such cost to be paid as an additional fee to the library, department or officer.

§ 2308. Disobedience of subpoena. (a) Judicial. Failure to comply with a subpoena issued by a judge, clerk or officer of the court shall be punishable as a contempt of court. If the witness is a party the court may also strike his or her pleadings. A subpoenaed person shall also be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding one hundred fifty dollars and damages sustained by reason of the failure to comply. A court may issue a warrant directing a sheriff to bring the witness into court. If a person so subpoenaed attends or is brought into court, but refuses without reasonable cause to be examined, or to answer a legal and pertinent question, or to produce a book, paper or other thing which he or she was directed to produce by the subpoena, or to subscribe his or her deposition after it has been correctly reduced to writing, the court may forthwith issue a warrant directed to the sheriff of the county where the person is, committing him or her to jail, there to remain until he or she submits to do the act which he or she was so required to do or is discharged according to law. Such a warrant of commitment shall specify particularly the cause of the commitment and, if the witness is committed for refusing to answer a question, the question shall be inserted in the warrant.

(b) Non-judicial. (1) Unless otherwise provided, if a person fails to comply with a subpoena which is not returnable in a court, the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance. If the court finds that the subpoena was authorized, it shall order compliance and may impose costs not exceeding fifty dollars. A subpoenaed person shall also be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding fifty dollars and damages sustained by reason of the failure to comply. A court may issue a warrant directing a sheriff to bring the witness before the person or body requiring his appearance. If a person so subpoenaed attends or is brought before such person or body, but refuses without reasonable cause to be examined, or to answer a legal and pertinent question, or to produce a book, paper or other thing which he was directed to produce by the subpoena, or to subscribe his deposition after it has been correctly reduced to writing, the court,

upon proof by affidavit, may issue a warrant directed to the sheriff of the county where the person is, committing him to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law. Such a warrant of commitment shall specify particularly the cause of the commitment and, if the witness is committed for refusing to answer a question, the question shall be inserted in the warrant.

(2) Notwithstanding the provisions of paragraph one of this subdivision, if a person fails to comply with a subpoena issued pursuant to section one hundred eleven-p of the social services law by the office of temporary and disability assistance or a social services district, or its authorized representative, or another state's child support enforcement agency governed by title IV-D of the social security act, such office or district is authorized to impose a penalty against the subpoenaed person. The amount of the penalty shall be determined by the commissioner of the office of temporary and disability assistance and set forth in regulation, and shall not exceed fifty dollars. Payment of the penalty shall not be required, however, if in response to notification of the imposition of the penalty the subpoenaed person complies immediately with the subpoena.

(c) Review of proceedings. Within ninety days after the offender shall have been committed to jail he shall, if not then discharged by law, be brought, by the sheriff, or other officer, as a matter of course personally before the court issuing the warrant of commitment and a review of the proceedings shall then be held to determine whether the offender shall be discharged from commitment. At periodic intervals of not more than ninety days following such review, the offender, if not then discharged by law from such commitment, shall be brought, by the sheriff, or other officer, personally before the court issuing the warrant of commitment and further reviews of the proceedings shall then be held to determine whether he shall be discharged from commitment. The clerk of the court before which such review of the proceedings shall be held, or the judge or justice of such court in case there be no clerk, shall give reasonable notice in writing of the date, time and place of each such review to each party or his attorney who shall have appeared of record in the proceeding resulting in the issuance of the warrant of commitment, at their last known address.

§ 2309. Oaths and affirmations. (a) Persons authorized to administer. Unless otherwise provided, an oath or affirmation may be administered by any person authorized to take acknowledgments of deeds by the real property law. Any person authorized by the laws of this state to receive evidence may administer an oath or affirmation for that purpose. An oath to a juror or jurors may be administered by a clerk of court and his deputies. This section shall not apply to an oath of office.

(b) Form. An oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.

(c) Oaths and affirmations taken without the state. An oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state if made in accordance with the provisions of this section.

(d) Form of certificate of oath or affirmation administered by officer of the armed forces of the United States. The certificate of an oath or affirmation administered within or without the state or the United States, by an officer of the armed forces of the United States authorized by the real property law to take acknowledgment of deeds, shall state:

1. the rank and serial number of the officer before whom the oath or affirmation is taken and the command to which he is attached;

2. that the person taking the oath or affirmation was, at the time of taking it, a person enlisted or commissioned in or serving in or with the armed forces of the United States or the dependent of such a person, or a person attached to or accompanying the armed forces of the United States; and

3. the serial number of the person who takes, or whose dependent takes the oath or affirmation, if such person is enlisted or commissioned in the armed forces of the United States. The place where such oath or

affidavit is taken need not be disclosed.