

Overview – What is Discovery?

General Information:

Discovery is the formal process by which the parties to a case in court exchange information about the case. This includes information about the witnesses and evidence to be presented at trial. Its purpose is to make the parties aware of the evidence which may be presented at trial.

Court rules govern the discovery process. District Division Rules 3.21 through 3.29 address many of these methods of discovery. During the case structuring conference the Court will likely discuss discovery, including time frames and potential issues, with the parties.

Discovery may be obtained through depositions, written interrogatories, production of documents, physical or mental examinations and requests for admissions. Discovery can be obtained regarding any matter that is not subject to a privilege (attorney-client privilege or physician-patient privilege for example) and that is relevant to the subject matter of the case whether it relates to the claim or to the defense

Discovery may involve the existence, description, nature, custody, condition and location of books, documents, electronically stored information or other tangible things, as well as the identity of the person or persons having knowledge of something that is “discoverable.” Even if something is arguably NOT discoverable because it would not be admissible at a trial, if the information sought appears “reasonably calculated” to lead to the discovery of admissible evidence, it may still be discoverable.

Required information for disclosure:

Certain information **MUST** be disclosed automatically by court rules. No request for discovery is necessary but each party must provide the following information:

- (1) the name and, if known, the address and telephone number of each person who is likely to have discoverable information that the disclosing party may use to support his or her claims or defenses. There are exceptions to this in the court rules.
- (2) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in his or her possession, custody or control and may use to support his or her claims or defenses. Again, there are exceptions in the court rules.
- (3) a computation of each category of damages claimed by the disclosing party, together with all documents or other evidentiary materials on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (4) for inspection and copying, any insurance agreement or policy under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

If you are the Plaintiff, you must disclose this information within 30 days of the date that the Defendant files an Answer. If you are the Defendant, you must provide this information within 60 days of filing your Answer. If either party becomes aware of additional information, the information required above must be supplemented with that information. Penalties may result for failure to disclose this required information.

What are some of the optional methods of discovery?

- Interrogatories – these are a series of written questions that are sent from one party to the other. The questions must be answered, under oath, and returned to the party who sent them. The court is not involved unless:
 - The party who is sent the interrogatories objects to one or more of them; or
 - The party who is sent the interrogatories fails to answer them in which case the court can issue a conditional default.
- Depositions – this is live testimony (or sometimes by video) provided out of court but under oath.
- Requests for Production of Documents – this is merely a request made by one party to the other for the production of documents. The court may become involved if a dispute arises surrounding the documents or their production and sometimes a party will file a request with the court for this type of production.
- Request for Admissions – this is where a party asks that another admit to certain things involving the case. Sometimes the court will become involved if there is a dispute and sometimes the party making the request will file it with the court.

For Further Information:

If you have questions, please contact the Information Center at 1-855-212-1234.