



DISCOVERY



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BASIC EXPLANATION

Discovery is the process by which each party may request specific information from the other prior to a hearing, as long as the information is relevant to the case. This can come in handy during particularly complex cases in which the opposing party may be withholding information, or information related to the case is not adequately covered in Mandatory Financial Disclosures. Discovery Requests can range from information regarding company property to certified registrations of livestock. Your attorney will work with you to discern the best strategy by which to request Discovery, and in turn, how best to respond to requests from the other party.

There are several forms of "Discovery." Typically, a party is served with a Discovery Request in the form of Interrogatories and Requests for Production of Documents. Interrogatories are simply written questions and tend to be very detailed. Requests for Production of Documents are just that; for example, a request for copies of all monthly bank statements from the last three years. These forms of Discovery may be "pattern" (requests that have been pre-approved by the Colorado Supreme Court), or "non-pattern" (which are unique to a given case). Additionally, Discovery can involve depositions (answering questions directly to opposing counsel outside of court), Requests for Admissions, and requests for information from a party's expert(s). Your attorney will determine which Non-Pattern Discovery Requests will be most useful and relevant in your matter based on their professional judgment. If you have any suggestions about what additional information to request in these documents, please communicate them to your attorney.



First, after the Initial Status Conference or as agreed to in a Case Management Plan filed by the parties, either party may serve Pattern Discovery Requests upon the other. Each party is limited to serving an additional – or Non-Pattern – ten (10) written Interrogatories and ten (10) Requests for Production of Documents. These requests do not need to be submitted all together. In fact, it may be beneficial to serve only a few requests at the beginning of the case and reserve the remaining requests until more information emerges. Your attorney will determine the appropriate timeline for submitting all ten requests, if needed.

Second, if a party wishes to pursue any other form of Discovery, they must request authorization from the court, unless the parties have agreed to allow it. Your attorney will determine if alternative Discovery is necessary based on the circumstances of your case.

Third, if Discovery is pursued, a party will receive the request and have thirty-five (35) days to respond to it. Information requested by way of Discovery is typically only known to the party, as opposed to the party's attorney, and may require time and effort on behalf of that party to gather all relevant information for a response. A party who has been served with Discovery must respond with the requested information or oppose the request(s) for good cause.

Fourth, all requests for Discovery, and Responses to those requests, must be completed not later than twenty-eight (28) days before an upcoming Hearing.

Fifth, if an expert is being used, that expert must provide his or her report(s) to the parties fifty-six (56) days prior to an upcoming Hearing. For example, a Child and Family Investigator is considered an expert, and must file a report with the Court in a timely manner.

Sixth, information that has been obtained in Discovery will be presented to the Court or otherwise used in a party's litigation strategy.



LEGAL BASES

C.R.C.P. 16.2(f)

This section of the law allows for service of Discovery Requests following the Initial status Conference and limited Non-Pattern Discovery, as well as additional Discovery with Court authorization.

C.R.C.P. 26(b)(2)

This section of the law outlines the limits on Requests for Discovery as a protective measure for parties. It is in the Court's discretion to modify or further limit the amount of discovery each party can request in a given case.

C.R.C.P. 33

This section of the law dictates that parties must answer Interrogatories fully, in writing, and under oath.

C.R.C.P. 34

This section of the law addresses the scope of Requests for Production of Documents, which spans from producing copies of documents to permitting entry onto property for the purpose of surveying the land.

C.R.C.P. 37

This section of the law allows for a party to request that the Court compel the other party to respond to a reasonable Discovery Request. Sanctions for evasive or incomplete disclosure include forcing the nonresponsive party to pay attorney's fees and being held in contempt of Court.

C.R.C.P. Form 35.4

This form contains the pre-approved (Pattern) Interrogatories that all parties may serve. There are thirteen (13) pattern Interrogatories, each with numerous sub-questions.

C.R.C.P. Form 35.5

This form contains the pre-approved (pattern) Requests for Production of Documents that all parties may serve. There are nine (9) Pattern Requests.



TIPS

(1) Accept that this will be a time-consuming process, and commit to taking the steps necessary to complete this Court-ordered requirement.

You are in the best possible position to gather and provide the information and documents necessary for sufficient responses to Discovery Requests served by the other party. Start gathering documents as soon as possible. Remember that gathering certain documents may necessitate submitting requests to outside professionals or financial institutions. You are also poised to assist your attorney in identifying gaps and inconsistencies within the other party's responses to your Discovery Requests.

(2) Bring concerns about hidden information to your attorney as soon as possible.

Discovery Requests must be served well ahead of an upcoming Hearing. If there is a dispute over the value of property or certain accounts that the other party did not provide adequate information for in their Mandatory Financial Disclosures, Discovery Requests may be the primary tool in bringing that information to light.

(3) Provide accurate information in your Responses.

If you are served with a Discovery Request, the law requires that you provide complete and honest responses. Your attorney will work with you to determine the extent of information you need to provide.

(4) If you open the door to Discovery, the other party may also walk through it.

Discovery is one of many tools you and your attorney can use during the course of your case. However, it is also a tool of the opposing party. Your attorney will work with you to determine if, and how, Discovery should be used in your unique circumstances.

FREQUENTLY ASKED QUESTIONS

What happens if I think the other party is lying in their response(s)?

As always, bring your concerns to your attorney as soon as possible. If it is evident that there is information missing, your attorney will determine if it is necessary to send a Deficiency Letter to the opposing party detailing what is missing, and if need be, to file a Motion to Compel Discovery to alert the court to these deficiencies. This may open the opposing party to sanctions and fees. Similarly, if the other side believes your Discovery Responses are lacking, they may also pursue these actions. Thus, your diligence and proactivity are necessary to complete this portion of your case.

Do I have to answer every question in the interrogatories?

Yes, if the request for information is relevant and reasonable. However, a party's "relative access to relevant information" is a factor in deciding what may be requested of that party in discovery. As well, the Court must consider a party's "resources, the importance of the Discovery in resolving the issues, and whether the burden or expense of the proposed Discovery outweighs its likely benefit." Your attorney will assist in determining whether there is good cause to object to a given request for information.

Can everything in discovery be used at my hearing?

Not necessarily. Information presented at trial is governed by the Colorado Rules of Evidence. Information that is "discoverable" is not always "admissible" under the Rules of Evidence. However, if a party testifies at a hearing in a way that is contradictory to information provided in their responses, information obtained in Discovery may be used to "impeach" that party (present that contradiction to the court).

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