

What to Expect In Your Written Discovery

Introduction.

Discovery is the processes by which parties attempt to obtain information, documents, statements, and any other relevant facts pertaining to your case, some of which will be used as evidence at trial. You can think of discovery in two broad categories (1) written discovery, and (2) depositions. Throughout your lawsuit, there will be times when the opposing party will serve you with written discovery. We will receive that discovery on your behalf, but we need your help to respond to discovery. This memorandum discusses what you can expect when you receive written discovery from the opposing party.

Document Demands.

Document Demands (also known as “Requests for Production of Documents and Tangible Things”) are one of the most basic forms of written discovery and they are widely used in lawsuits. A Document Demand obligates you to allow the opposing party to review and inspect documents in your possession, custody or control that are relevant to the lawsuit.

What documents are relevant? That depends on your lawsuit and the type of documents requested by the other side. You are only obligated to produce documents requested by the opposing party. Typically, Document Demands are drafted broadly to include as many documents as possible. But we will review all Document Demands before we send you a copy and inform you of what documents are required.

At times, an opposing party may request documents they are not entitled to, such as personal and private information. If this occurs, we will prepare the proper objection on your behalf, discuss the issue with you, and inform you of whether the documents must be produced.

The Response.

When a Document Demand is received, you are required to respond to that demand within 30 days. The response informs the other side (i) of which demands you will respond to by providing documents, (ii) sets forth any objections, and (iii) states whether any demands will not be complied with. We will prepare your response for you. In addition to a proper response, you are also obligated to produce the relevant documents.

Producing the Documents.

Producing the documents often occurs at the same time as sending the response. And usually we will copy the relevant documents, or save them onto a computer disk, and send them to the opposing party with the response. However, there are times when we may request that the opposing party either retrieve the documents or come to our office to review them. You don't need to worry about how the documents are produced because we will do that for you. Your only obligation in this process is to provide us with all relevant documents.

Your Obligation to Provide Us With All Relevant Documents.

Once you receive notice from us that a Document Demand has been received, we will ask you to provide us with all relevant documents. Just because you give us a document does not mean that we will automatically produce the document to the opposing party. We review all documents before production to ensure the document is relevant and that there are no objections to producing the information.

You must provide us with all relevant documents, this means the good and the bad. If you have a document that you believe is not favorable to your case, you must give us the document. But be sure to let us know your concerns so that we can review the document with you.

Also, you may have already given us all relevant documents before a Document Demand is received. If so, just let us know that. We will still want to know from you if any additional relevant documents were obtained by you after you gave us your documents.

Finally, you are obligated to give us all documents that are in your "possession, custody or control." Documents that are in your possession are easy to identify because you would have them at your home or office. Documents in your custody or control can be a bit tricky to identify. For example, if you give your accountant your financial papers, those papers are still in your control because the accountant works for you—he is your agent. Therefore, those documents must be obtained and possibly produced (if they are relevant and we have no

objections to producing them). Or if documents are placed in a storage facility, they are under your “custody and control” and must be produced if relevant even though they are not currently in your possession. If you have any questions about what documents must be produced, please ask us to explain this further.

Important Reminder: any relevant documents NOT produced when requested in a Document Demand may be barred from use at trial. For this reason, producing all relevant documents, especially those we want to use at trial, is critically important.

Verification.

Once we prepare your response to the Document Demand, you must “verify” the response. A verification is like an affidavit; it is a statement under oath that the matters set forth in the response are truthful. Thus, if we state that no documents exist for a particular demand, then you are saying under oath that such statement is truthful. Obviously, we would never ask you to verify a response that is not truthful. So it is important that you review the response to be sure the matters stated therein are accurate. We will provide you with a copy of your response before it is due and ask you to review it before signing the verification.

Interrogatories.

Interrogatories are just written questions asked by the opposing party. There are two types of interrogatories—Form Interrogatory (asking a set of pre-printed questions) and Special Interrogatories (attorney drafted questions). As with all other written discovery, once interrogatories are served on you, you have 30 days in which to respond to the interrogatories in writing.

We will prepare your response to the interrogatories and provide them to you for review before they are due. The response will contain answers to the questions asked. We will also state any objections we may have to the information being sought in the interrogatories. Most of the information needed to respond to the interrogatories will be in our file. But there may be additional information we will need from you. If that occurs, we will let you know as soon as possible so you can assemble the necessary information.

As with Document Demands, you are required to verify your response. So be sure to review the response for accuracy.

Requests for Admissions.

Requests for admissions are unique in that they demand that you either admit or deny the statement made in each request. Requests for Admissions (referred to a “RFAs”) are not always used, but when they are received a proper response must be drafted.

RFAs are often used to admit the authenticity of documents. They can also be used to establish fundamental facts about the case. Once admitted, the fact is considered proven for all purposes at trial. If a particular request is denied, then the facts contained in that particular request must be proven at trial. If a denied fact is proven at trial, then the party denying that fact in an RFA may be sanctioned for the costs incurred to prove that particular fact. The bottom line is that you should not deny an RFA unless the statement is not true.

We will prepare your response to any RFAs issued to you. You must verify the response, so your review of the response is important before be complete and serve the response on the opposing party.

Discovery Motions.

There may be times when we receive an inadequate response from the opposing party and have to take the matter to Court and ask the Court to order that party to give a proper response. Also, the opposing party may file a motion against you demanding further responses that we believe are not necessary or proper.

Once a response to discovery is received, a party only has 45 days in which to file a motion compelling additional responses if the original response is not adequate. Before a motion can be filed, the parties must “meet and confer”, which is usually done in a letter, but can also be done by telephone, email, or fax. If the parties cannot agree by meeting and conferring on the discovery issue, then a Motion to Compel must be filed with the Court.

Generally speaking, the Court disfavors Motions to Compel. One Judge has likened such motions to “two kids in a sandbox.” As such, parties must be certain that the items for which they are filing a Motion are important and relevant to the lawsuit. Filing a Motion for an irrelevant or unnecessary purpose is not only frowned upon by the Court, but could also subject the moving party to sanctions for bringing the motion in the first instance.

Technically, the party who prevails on a Motion to Compel is awarded sanctions to compensate them for the attorneys’ fees they spent to bring the motion. ***This rarely occurs.*** More often, the Court either refuses to issue sanctions whatsoever or the amount of sanctions is nominal in comparison to the actual costs of the motion.

Need More Information?

This is a brief overview of the most common types of written discovery you will encounter in your lawsuit. We will keep you informed regarding all discovery requests made or received in your case throughout the process. If you ever have any questions or would like more information regarding your case, feel free to contact us:

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