

WHAT IS DISCOVERY?

A legal information resource by the Federal Pro Se Legal Assistance Project

This document provides important information about the discovery process. It was created for pro se litigants with cases pending in federal court.



What is Discovery?

Discovery is the stage of a court case when each party may ask for information from the other party (or parties). Rules 26 through 37 of the Federal Rules of Civil Procedure (FRCP) explain how the discovery process works. They can be found [here](#).

Discovery is a two-way street: plaintiffs can ask defendants for facts, documents and other information relating to the issues in the case; likewise, defendants can ask plaintiffs for facts, documents and other information.

What Are the Different Types of Discovery (the “Tools”)?

The Federal Rules of Civil Procedure allow litigants to obtain information in various ways.



- **Interrogatories** – FRCP 33
 - These are written questions. Answers to interrogatories must be served within thirty (30) days after a party is served with them.
- **Requests for Production of Documents, Electronically Stored Information or Things** – FRCP 34
 - These are requests to produce documents and tangible things (physical evidence). Responses to these requests must be served within thirty (30) days after a party is served with them.
- **Depositions** – FRCP 30 and 31. A deposition is testimony under oath, either through oral examination or by written questions. “Reasonable notice” must be given to the person to be deposed and to all other parties.



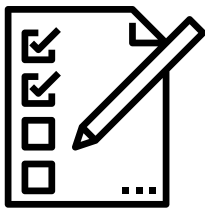
- **Requests for Admission – FRCP 36**
 - These are requests made to a party to admit relevant facts, “the application of law to fact, or opinions about either,” or the genuineness of any documents. Responses to these requests must be served within thirty (30) days after being served with them. If a request is not responded to within the 30-day period, the matter it covers is considered admitted.
- **Physical and Mental Examinations – FRCP 35**
 - If a party’s mental or physical condition is an issue in the case, the court may order the party to submit to an examination “by a suitably licensed or certified examiner.” The request for an examination must be made by motion.

How Does the Discovery Process Start?



- The court usually holds an initial conference to discuss a discovery plan and schedule.
- Before this conference, the parties must consult with one other about the plan and should try to agree on a schedule of discovery deadlines. See FRCP 26. This discussion can happen by phone, in person, or through email.

What Should be Included in a Discovery Plan?



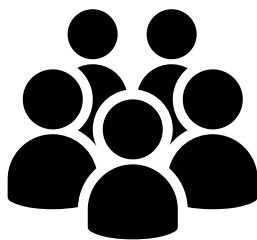
- The discovery tools each party plans to rely on.
- The categories of information that each party intends to ask about. Parties may agree to limit the topics covered.
- The deadlines for completing each aspect of discovery. Parties should do their best to agree on realistic deadlines.
- Whether any changes are needed in the requirements for initial disclosures.

What are Initial Disclosures?



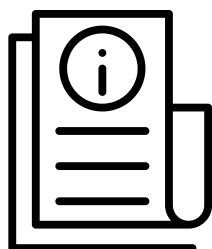
- Before the parties can start using discovery tools, certain “initial disclosures” must be served. FRCP 26(a) requires each party in a federal case to tell the other parties (or their attorneys, if represented) the following:

What are Initial Disclosures?



- Who are the known witnesses? Parties must provide the name and contact information of each person who is likely to have information about the case.
- What are the key documents? Parties must provide a copy or a description (location and category) of all documents, electronically stored information (such as emails and texts), and tangible things that support their claims or defenses.
- What are the damages? The plaintiff must tell the defendant(s) how much money they are asking for and how they calculated the amount. They must produce documents and other evidence that supports their calculation.
- Is there insurance? The defendant(s) must tell the plaintiff if any insurance policy is available to pay a judgment. If so, a copy of the insurance policy needs to be provided.

What Can You Ask for in Discovery?



FRCP 26(b)(1) sets the standard for what may be requested in discovery: *“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....”*

The word “proportional” is meant to ensure that discovery requests are reasonable and not overly burdensome.

Note: Discovery should be used to obtain all information from other parties that is relevant to the case, not only “good” or “helpful” information. Parties are not allowed to hold back information they think will be harmful. It is important for all parties to learn favorable and unfavorable facts so they can better evaluate the merits of the case and decide how to proceed.

Correcting or Supplementing Responses



Discovery is an ongoing process. FRCP 26(e) requires parties to supplement or correct any responses they have made in discovery “in a timely manner” if they learn that information that was previously provided was incomplete or incorrect.

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Discovery From Non-Parties



FRCP 45 allows for discovery from “non-parties” – those who are not named as a plaintiff or defendant but who might have information relating to the issues in the case.

To get discovery from a non-party, a subpoena must be used. The subpoena must be issued by the court and served on the non-party. Notice must also be given to the other parties in the case.

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