

Guide to Discovery:

## Discovery Basics

### What is Discovery?

Discovery is the formal process of obtaining facts, documents, and evidence in your lawsuit in order to evaluate and prepare your case. The general framework for discovery is provided by Federal Rules of Civil Procedure 16, 26-37, and 45. In addition, the Court's Local Rules and orders by the judge in your case may provide further guidance about discovery.

You can obtain evidence by using several tools of discovery, including interrogatories, requests for production, requests for admissions, depositions, and subpoenas. This guide will explain what discovery tools are available to you.



#### **What about informal discovery?**

Discovery is just one way of getting facts, documents, and evidence to support your claims and defenses. Don't forget to research your opponent on the internet, search publicly available documents, and talk to people who are not parties to the lawsuit, but may have valuable information about your case.

### Why is Discovery Important?

The discovery process is one way you can gather the facts, documents, and evidence to support your claims and defenses. For example, if you have filed an employment discrimination case, you may need employment records or business agreements to prove your claims. Discovery is the formal way of obtaining those documents from another party or even from a person or entity that is not a party to the case.

#### **WARNING!**

**The Federal Rules of Civil Procedure impose several mandatory discovery obligations on the parties.**

See Public Counsel's Guide to Initial Discovery Obligations for more information. You should regularly consult the Federal Rules of Civil Procedure, the Local Rules of the Central District of California, and any relevant orders issued by the judge in your case.

### What Can Be Discovered?

Generally, you can use discovery to obtain information that pertains to any of the claims or defenses in your lawsuit as long as the information is not legally protected under the attorney-client privilege or any other law. Some discoverable information, however, may be subject to privacy concerns or special privileges and will require a protective order before disclosure. The following are examples of facts, documents, and evidence you may be able to obtain through discovery:

- Business records related to the dispute in your case
- Names of parties and potential witnesses
- Government agency records

- Employment contracts
- Information about a business’s hiring and firing practices
- Information about the personal, educational, and professional background of a potential witness in your case

### **From Whom Can You Obtain Discovery?**

The discovery process can be used not only to obtain information and documents from other parties to your lawsuit but also from people and entities not involved in your case (“non-parties”). The process for obtaining documents and information from parties and non-parties differs. The chart below illustrates these different methods.

<b>What kind of evidence are you trying to obtain?</b>	<b>What discovery tool should you use to obtain the evidence from a <u>party</u>?</b>	<b>What discovery tool should you use to obtain the evidence from a <u>non-party</u>?</b>
<i>A written admission</i>	Request for Admission <b>See FRCP 36</b>	Not available
<i>A document or thing</i>	Request for Production <b>See FRCP 34</b>	Subpoena Duces Tecum <b>See FRCP 30 and 45</b>
<i>A written answer to a question</i>	Interrogatory <b>See FRCP 33</b>	Not available
<i>Oral testimony at a deposition</i>	Deposition <b>See FRCP 30</b>	Deposition Subpoena <b>See FRCP 30 and 45</b>

### **When Does Discovery Begin?**

The discovery process begins only after you have held the “conference of the parties” with your opposing counsel (or your unrepresented opponent(s)). Please see Public Counsel’s Guide to Initial Discovery Obligations for an explanation of the conference of the parties required by Federal Rule of Civil Procedure 26. Either the plaintiff or defendant can initiate this conference at any time after the defendant responds to the complaint. However, we strongly recommend that you take the initiative and schedule the conference of the parties.

### **When Does Discovery End?**

The Court will likely impose a date for the end of discovery. You may find this deadline in the Court’s standing order, scheduling order or any other order related to your scheduling conference. Although some of these orders are not necessarily related to discovery, they may discuss discovery procedures and cutoff deadlines that differ from the Local Rules of the Central District of California. It is important to read everything on your docket and your judges’ webpages so that you will know whether any discovery deadlines exist in your case.

**WARNING! You have an ongoing duty to supplement or amend any of your discovery responses or disclosures.** (for example, in response to an Interrogatory, Request for Production, Request for Admission, or in an initial disclosure) if you learn that the information you have already provided is incomplete or incorrect. See Federal Rule of Civil Procedure 26(e) for more information.

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