



Federal *Pro Se* Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

Guide to Discovery:

■ Initial Discovery Obligations ■

During the discovery period there are several steps you must take to fulfill your discovery obligations. Although some of these steps are not actively supervised by the Court, you must still know what Federal Rules of Civil Procedure and Local Rules of the Central District of California apply to you and when you must take these steps. This guide will explain these initial discovery steps in detail.

Step 1 Determine the Scheduling Conference Date or Read the Scheduling Order

To begin meeting your discovery obligations, determine when a “scheduling conference” has been set in your case or if the Court has issued a “scheduling order” instead.

A. If the Court has set a Scheduling Conference:

The scheduling conference is a hearing involving the parties in a lawsuit and the judge assigned to the case. The scheduling conference usually occurs after an answer or motion to dismiss has been filed with the Court. If the Court sets a scheduling conference, it will send you an order with the date and time. The order will also appear as an entry on your case docket. See Federal Rule of Civil Procedure 16 for more information.

B. If the Court has issued a Scheduling Order:

After the scheduling conference, the Court should issue a scheduling order. However, sometimes the Court will issue the scheduling order without holding a scheduling conference. If the Court has not held a scheduling conference within 120 days after the plaintiff has served any defendant with the complaint, you should assume that you will only receive a scheduling order from the judge and proceed with the conference of the parties and the filing of your Joint Discovery Plan (most commonly referred to as a “Joint 26(f) Report”) as noted below.

Step 2 Initiate the Conference of the Parties

Federal Rule of Civil Procedure 26 requires all parties that have appeared in the case to hold a “conference of the parties” to discuss and initiate the discovery process. This meeting can be held in person, over the phone, via email or mail, or by any other means of communication. **You cannot ask for discovery from the other party until you have completed this step.** We suggest that you take the initiative and call your opposing counsel or unrepresented party to schedule this conference.

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Local Rule 26-1 and Federal Rule of Civil Procedure 26 specify the topics the parties must discuss at the conference of the parties. These include:

- a. The nature and basis of the claims and defenses in the case;
- b. Possibilities for settling or resolving the case;
- c. Issues related to preserving discoverable information;
- d. A Joint 26(f) Report;
- e. A proposed trial date and estimate of length of trial;
- f. The likelihood of joining additional defendants or plaintiffs to the case; and
- g. A date and time for the exchange of initial disclosures required by Rule 26(a)(1)

Federal Pro Se Clinic • Roybal Courthouse • 255 East Temple Street, Suite 170 • Los Angeles, CA 90012 • (213) 385-2977 ext. 270
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Timing

The parties generally must hold the conference of the parties no later than 21 days before the scheduling conference. The exceptions are as follows:

- a. If no scheduling conference has been set by the Court, you may set the conference of the parties after the defendant has responded to the complaint. If no scheduling conference has been set by the Court, you must complete the conference of the parties no later than 21 days before the deadline for your judge to issue the scheduling order. This deadline is explained in Federal Rule of Civil Procedure 16(b)(2).
- b. The Court may choose to relieve the parties of their obligation to participate in a conference of the parties. Check any orders from the judge in your case to see whether the judge has addressed this issue.

Step 3 Provide the Other Side with your Initial Disclosures

Federal Rule of Civil Procedure 26(a)(1) requires that each party provide “initial disclosures” to the other parties in writing without waiting for a formal request. These initial disclosures provide a description of the evidence you currently have in your possession to support your claims, including a list of your potential witnesses and a list of documents that support your claims and defenses. An initial disclosure template is included with this guide.

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Identify witnesses and documents (including electronically stored information) you “may use to support [your] claims or defenses.” In addition, if you are the plaintiff, provide the defendant with a detailed estimate and computation of how much money you believe you are owed. If you are the defendant, identify any insurance policies that may cover your liability. Note: You do not need to provide copies of any documents with this report. You only need to let the opposing parties know that you have these documents in your possession or control. It is the other side’s responsibility to make a formal Request for Production to obtain them.

Timing

Send your initial disclosures to opposing counsel (or your unrepresented opponent(s)) within 14 days after your conference of the parties, unless the Court’s scheduling order provides a different deadline. See Federal Rule of Civil Procedure 26 for more information.

Service

Do not file your initial disclosures with the Court. Send them to opposing counsel (or your unrepresented opponent(s)) with a certificate of service and keep a copy for yourself. You can send them by first class mail or, if you want proof of mailing, send them by return receipt, certified mail.

WARNING!

You must provide your initial disclosures to the other side. The failure to provide your initial disclosures may result in your inability to introduce the information at trial. Although you may agree with the other side not to make such disclosures, we recommend that you make the disclosures and that you insist that the other parties in your case comply with the initial disclosure rules as well.

Step 4 Draft and File a Joint Discovery Plan (Joint 26(f) Report)

Following a conference of the parties, the parties are required to jointly file a document titled “Joint Discovery Plan” (most commonly referred to as a “Joint 26(f) Report”) with the Court within 14 days. This report helps the judge decide when to schedule your trial, your discovery cut-off date, and other important dates in your case. *A sample Joint 26(f) Report is included with this guide.*

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The Joint 26(f) Report should contain the parties’ views and proposals on:

- a. Changes to the timing, form, or even the requirement to exchange initial disclosures;
- b. Potential types of discovery each party will seek from the other side;
- c. When discovery should be completed;
- d. Whether discovery should be conducted in phases or limited to particular issues;
- e. Any issues about the discovery of electronic information, including how the electronic information should be produced;
- f. Issues related to claims of privilege or protection of trial-preparation materials;
- g. Potential changes to the limitations on discovery required by the Federal Rules of Civil Procedure or the Local Rules of the Central District of California;
- h. Other orders the Court should issue under the Federal Rules of Civil Procedure; and
- i. Any other information the judge in your case specifically requests in a “standing order” or any other orders. These orders can be found by looking at your docket or the judge’s webpage.

If you are the plaintiff in the case, you should take the initiative and prepare the first draft of the Joint 26(f) Report and send it to your opposing counsel (or unrepresented opponent(s)). Your opponents should make any additions or corrections and return it to you for your approval. Once you all agree on the Joint 26(f) Report, one of you should file it with the Court by the deadline. Typically, an attorney with e-filing privileges will file the document for the group, but you should be prepared to file it yourself.

Filing and Serving Your Joint 26(f) Report

If you have taken responsibility for filing the Joint 26(f) Report with the Court, file **1 original** and **2 copies** of the Joint 26(f) Report with Civil Intake. In addition, send **1 copy** of the Joint 26(f) Report to your opposing counsel (or unrepresented opponent(s)) by mail on the same day that you file.

You may file your Joint 26(f) Report with the Court in person or by mail. Keep in mind that mailing the Joint 26(f) Report to the Court may delay the official date on which it is filed.

The addresses of the Civil Intake Divisions for the Central District of California courthouses are as follows:

LOS ANGELES

United States Courthouse
Central District of California
255 East Temple St., Ste TS-134
Los Angeles, CA 90012

SANTA ANA

United States Courthouse
Central District of California
Southern Division
411 West Fourth St., Ste. 1053
Santa Ana, CA 92701-4516

RIVERSIDE

United States Courthouse
Central District of California
Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Step 5 Read the Court’s Scheduling Order

After you have filed the Joint 26(f) Report, you will receive a document from the Court called a “Scheduling Order.” This document is extremely important because it lists many deadlines for your case, including discovery deadlines, motion deadlines, and deadlines for required pre-trial documents. Be sure to read the scheduling order carefully because it will often change the deadlines originally set by the Federal Rules of Civil Procedure. Make a note of each important date in your calendar and review those dates frequently so that you do not forget them.

Also make sure you understand exactly what your judge means by the term “discovery cut-off” – does it include only discovery, like interrogatories and depositions, or does it also include motions to compel the opposing party to comply with his or her obligation to respond to discovery requests? Different judges may have difference approaches to this issue.

What if you have not received a Scheduling Order?

If you have not received a scheduling order within 90 days after any defendant has been served or within 60 days after any defendant has appeared in your case and you have filed a Joint 26(f) Report, consider filing a “Request for Status Conference” with the Court.