

SUPREME COURT, CIVIL BRANCH
NEW YORK COUNTY
60 Centre Street, New York, N. Y. 10007

HELP CENTER
Room 116, (646) 386 - 3025

The Discovery Process

Note: All persons involved in a lawsuit should consult an attorney. This office gives you information, forms and instructions on court procedures. As an office of this court we cannot give legal advice or act as your advocate.

In many civil actions, before the case is resolved there takes place a process known as pretrial discovery. This summary describes the process.

A lawsuit should not be a contest in the dark. Justice is best served by having all the relevant facts known to all the parties before trial. Therefore, the Civil Practice Law and Rules (CPLR) Article 31 provides that the parties to a lawsuit may obtain certain information from one another about the merits of the case. For example, if a plaintiff sues someone claiming to have suffered personal injuries as result of the negligent conduct of the defendant, the latter is normally permitted to examine copies of the medical records of the plaintiff concerning the injuries in question and the plaintiff is normally permitted to ask oral questions of the defendant's employee about his conduct at the scene of the accident on the day in issue.

The following are the key discovery devices.

(a) Interrogatories: These are written, numbered questions posed by party. A space is left after each question in which the opposing party is required to insert an answer. Each question must be answered separately and fully. The person answering is obliged to swear to the truth of the answers given and to return them to the sender within 20 days from service of the interrogatories (25 if the service was by mail), although this period is often extended by the agreement of the parties. CPLR 3130 to 3133. The party served with the questions may object to them rather than answer them if they are defective (e.g. a question is incomprehensible). All objections must be stated with reasonable particularity. If a party objects only to some of the interrogatories, he or

she must answer those as to which he or she does not object.¹

(b) Document Demand: As the name indicates, this is a written demand in which one party demands that the other produce certain documents for inspection and copying. (This device is also referred to as a notice of discovery and inspection). The demand must define the items sought with reasonable particularity. CPLR 3120. The same time is allowed to answer as with interrogatories. Objections may be made to the demand, but they too must be set forth with reasonable particularity. CPLR 3122(a). Where documents are withheld because an objection is made, the party doing the withholding must specify the ground(s) for withholding each such document. See CPLR 3122(b).

(c) Depositions: Depositions (also known as examinations before trial or EBTs for short) are sessions conducted in the same manner as a trial (CPLR 3113) in which a party poses oral questions to an adversary or a non-party witness about relevant issues. The person to whom the questions are addressed is placed under oath, and the questions and the spontaneous answers are recorded by a court reporter for transcription in to a written text. The person answering the questions does so under oath. A deposition on written questions is one in which the questioner submits written questions and an unrelated party, usually the court reporter, poses the questions as written and records and transcribes the oral answers.

Frequently, the Justice presiding over a case will issue an order scheduling the discovery to be taken in the case at a so-called preliminary conference. Such a conference can be requested by serving a notice to that effect on all parties and

¹ To be distinguished from interrogatories but perhaps likely to be confused by the layperson is the bill of particulars. This is typically used in personal injury litigation, in which the complaint often contains vague claims. Frequently, a defendant who remains uncertain of the nature of the plaintiff's claims will serve a series of written questions on the plaintiff known as a demand for a bill of particulars. The purpose of the bill is to amplify or particularize the allegations of the complaint. The plaintiff is obliged to supply a bill within 30 days (35 if mail was used by the sender) to the extent that he or she does not object to any aspects of the demand.

presenting the original to the Trial Support Office, Room 158, together with proof of service.

At times a party to a case may fail to provide discovery requested by another party or may obstruct the other party's attempts to obtain that discovery. Should that occur, the aggrieved party should in the first instance contact counsel for the adversary, or if the adversary is self-represented, the adversary himself or herself, and attempt to reach an amicable resolution to the dispute. If that does not succeed, the aggrieved party may wish to consider a motion to compel the adversary to provide the missing discovery and/or to penalize the adversary for obstructive conduct. Before such a motion is made, the aggrieved party should check with the courtroom personnel of the assigned Justice or the New York Law Journal to determine whether the assigned Justice has a practice requiring notification of his or her courtroom personnel before a discovery motion is made. Furthermore, the Administrative Judge of Supreme Court, Civil Branch, New York County has issued a directive requesting that parties seek a conference instead of proceeding by motion. A copy of Judge Crane's policy statement is attached.

If a motion is to proceed, a motion to compel is one available remedy. See CPLR 3124.

CPLR 3126 provides for the imposition of certain penalties upon a party who fails to obey a discovery order or willfully fails to disclose information in a case. A motion made pursuant to either of these sections must be accompanied by an affidavit of good faith, that is, an affidavit setting forth in detail the efforts that were made by the parties to resolve the discovery dispute without court intervention (that is, what contacts were made or attempted and their outcome).

Once either all necessary discovery has been completed or the allotted time for doing so has expired, a party to the case should press for some substantive disposition of the case. Most frequently, this is done by trying to settle the case, making a motion for summary judgment if one is well-founded, or noticing the case for trial.