

**INFORMATION REGARDING YOUR WRITTEN
DISCOVERY RESPONSES**

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As a family law case proceeds, each party is entitled to engage in a process of finding out what the opposing party's claims consist of, the basis for those claims, and what proof or evidence that party has to support his or her position. This process is called "discovery".

This discovery may take several directions. Some forms of discovery are written interrogatories, request for admissions, request for production and subpoena duces tecum.

The "discovery" phase is a very important stage in your lawsuit. The outcome of your suit may be determined during this time of discovery.

Clients can spend hundreds and even thousands of dollars in attorney's fees either trying to avoid answering interrogatories or requests for admissions, or responding to a request for production or a subpoena duces tecum.

No doubt it is a chore, tedious and time-consuming, but your efforts and your understanding of these Rules Regarding Your Written Discovery Responses will save you money in the long run, and may keep you from losing on a technicality.

It will help to understand what these various types of written discovery are:

(1) Written Interrogatories are questions you are asked and which you must answer under oath.

(2) Request for Admissions are points or facts that an opposing party wants you to "admit" but you may "deny" if the request is not true.

Your response of sworn written answers or your response of "admit" or "deny" must be filed with the court no later than thirty (30) days from the date the questions or requests themselves were received by your attorney. A draft of your answers or responses should be in your attorney's office within a reasonable time frame in advance of their court filing deadline. Don't be lulled into thinking there is plenty of time for you to start preparing your answers or responses. Your attorney will need time to type, revise, review and file your answers or responses.

You must answer these questions or request for admissions. If you don't, you may be sanctioned by the Judge. This sanctioning could include striking part of your side of the lawsuit or a monetary fine, you and/or your witnesses may not be allowed to testify,

you may not be able to bring out certain evidence at trial, or you may lose everything you wanted to accomplish in this lawsuit.

If your answer was correct at the time, but circumstances later change, or you acquire additional information, or you unintentionally omitted an answer, you must supplement this information at least thirty (30) days prior to trial, and amend your previous answers. You must notify your attorney of any changes in any part of your answers immediately. Failure to supplement thirty (30) days prior to trial can result in undesirable consequences. For example, if you fail to identify a witness, in response to an interrogatory, that witness will not be permitted to testify.

If you need to add names of any witnesses, notify your attorney immediately upon your own knowledge of such.

In the case of admissions, if you wanted to deny the request, because it was not true or accurate, but did not do it timely, it will be taken as an admission, or true.

Will you object to these answers or requests for admissions? There may be grounds to object to certain questions or requests for admissions. However, that should not stop you from drafting your answers and responses. When appropriate, your attorney will file objections at the same time your answers or responses are filed with the court.

(3) Request for Production (sometimes also called a Request for Discovery);
and/or

(4) Subpoena Duces Tecum

Both a request for production and a subpoena duces tecum require you to gather and turn over to your attorney and then to the other side, certain relevant, requested documents (or other tangible things such as photographs, school records, tax returns, financial account information, etc.).

These two methods of discovery differ however, in the time allowed for response. The Request for Production has a thirty (30) day limit or deadline for you, through your attorney, to turn over or make available for inspection, the documents or tangible things requested.

The Subpoena Duces Tecum normally has a shorter time frame, requiring you to bring with you to a hearing, trial or deposition, set at a time and certain date, the requested (subpoenaed) documents or other tangible things.

You should bring these things to your attorney in advance of their due date for review and perhaps to protect your legal rights.

The documents you gather in response to the Request for Production are due in your attorney's office by the deadline he gives you.

You are not required to produce any document or other tangible thing unless it is in your possession, custody or control. This means that you may not have actual possession of something, but as long as you have a superior right to make someone else produce it for you or to you, then the law says you have "possession" of the requested item and must produce it, or at least use your best efforts to produce it.

Sometimes your attorney may choose to provide the other side with the necessary consent form to obtain the requested records (and they incur the expense) from third parties.

If you are able but do not produce the requested or subpoenaed documents or things timely, you may be sanctioned by the Judge. The Judge can strike out part or all of your side of the case, not allow you to introduce documents or things at time of your trial if you did not earlier and timely produce them, and/or fine you monetarily.

If after you make your initial response and you have additional materials that become available (example: new monthly bank statements, or something you overlooked or could not locate before) you must notify your attorney and take them to his/her office at once.

COST SAVINGS SUGGESTIONS

You may make substantial savings in your attorney's fees if you follow certain suggestions. When you receive a written discovery request you are likely to resent the time and trouble involved in responding. You have every right to discuss the request with your attorney. However, you should remember that you pay for all the time your attorney spends on your case. If you require your attorney to spend time listening to your grievances about the discovery process, you are only increasing your fees and accomplishing nothing toward the resolution of your case. If the request is overbroad or harrasing (and can be proven so according to established legal theories) your attorney will file the appropriate objection and seek protection from the court. Otherwise, you must respond.

Interrogatories. When you receive the written interrogatories, you should first carefully read each question. Make sure you understand the question. If not, ask your attorney to explain it to you. Then you should prepare a draft of the answers. After preparing your answers, review the questions again to make sure your answers are truthful and complete. Finally, present your answers to your attorney in a legible form, and in the sequence asked in the interrogatories. If you have access to word processing equipment, you should type the answers. This way your attorney will not spend time trying to decipher your handwriting. You should submit your answers well before the

required answer date. Your attorney will then review your answers and may make suggestions for additional information. The attorney will prepare the answers in the proper form and will request you to sign, under oath. Remember, the less time your attorney spends trying to read, understand and complete your answers, the more money you save in fees.

Request for Production. When you receive the request for production, you should first carefully read each request. Make sure you understand them. If not, ask your attorney for further explanation. Then, you should begin gathering the requested documents. You should organize them by number, according to the number of the request. If you do not have possession, control or custody of a document, make a legible list of such item, according to the number of the request, and submit the list to your attorney. If the request is for monthly or periodic statements (e.g., bank or brokerage statements), organize them chronologically.

You should index each response. For example, if Request #1 calls for bank statements and canceled checks for the period covered from January 1, 1990 to the current date, and you maintained two accounts during that period, your index will be:

"Response to Request #1 - Bank statements and canceled checks from account #5432, First National Bank, for the period covered from Jan.1, 1990 to current date, are produced in file #1. Bank statements and canceled checks from account #9876, State National Bank, for the period covered from Jan. 1, 1990 to the current date, are produced in file #1."

Once the documents are collected, organized and indexed, submit them to your attorney. They should be presented with tabs separating the various documents (or in separate files), clearly identified by number according to the number of the request. Be sure to submit the documents well before the response deadline so that your attorney will have sufficient time to review them.

If you choose to present the material in a disorganized fashion, your attorney will be forced to spend extra time collecting and organizing. This will be an additional expense to you. Remember, the less time your attorney spends trying to organize, read and understand your production response, the more money you save in fees.