



**PRO SE HANDBOOK
CHAPTER 5: DISCOVERY
(ALL-IN-ONE DOCUMENT)**

FEDERAL BAR ASSOCIATION
ACCESS TO JUSTICE TASK FORCE

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"A HANDBOOK FOR PRO SE LITIGANTS"

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PRO SE HANDBOOK
FROM THE FEDERAL BAR ASSOCIATION

CHAPTER 5 DISCOVERY

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ITEMS 5.00 through 5.06



5.00 | INTRODUCTION

"Discovery" is a term that refers to the information that the parties will gather to support their case. Federal Rules of Civil Procedure 26 through 37 govern discovery. Parties often need to gather documents such as medical records, employment records, or business records. Information can be obtained in the form of written questions, written document requests, or oral questions. Discovery can begin only after the parties have met and conferred. Rule 26(d). Earlier discovery can take place if the parties agree or if the Court issues an order allowing earlier discovery.

Each party in an action will seek some discovery. This means that if you file an action, you will need to obtain information from the party you are suing, as well as provide information to that party. For example, if you file a personal injury action, your medical condition is at issue and you will need to provide some of your own medical records to the opposing party.

Methods of Discovery Available

Interrogatories, requests for production, depositions, requests for admissions, and a mental or physical examination are the most common methods for obtaining discovery.

You will need to read the federal rules carefully regarding each type of discovery request to make sure that you comply with their specific requirements. This Handbook will give you a quick overview of the methods of discovery and how they may be useful to your case.

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5.01 | INTERROGATORIES (RULE 33)

Interrogatories are written questions sent by one party to any other party to the lawsuit and must be answered in writing and under oath. Rule 33 of the Federal Rules of Civil Procedure covers interrogatories in detail. If you are serving interrogatories, you may not serve more than 25 interrogatories without the Court's permission.

If you are answering interrogatories, you must answer any interrogatory with all non-privileged information available to you without doing research. This means that if the answer is contained in your business records or personal files, you must look for the answer. You may object to an interrogatory seeking privileged information or that is overbroad, vague, or unduly burdensome. You must explain fully the reason for your objection. If you later learn that your answer is incomplete or incorrect, you must let the other side know and promptly supplement your original answer.

The interrogatories must be answered within 30 days and must be signed in accordance with Rule 26(g)(1). If you need more time to answer, you can request more time from the opposing party. If the opposing party does not agree, you can request more time from the Court by filing a motion.

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5.02 | REQUESTS FOR PRODUCTION (RULE 34)

In a request for production of documents, you can ask the opposing party for documents, including electronically stored information (like e-mails) which you need to make or defend your case. You may seek documents that you reasonably believe the other side has and contains information relevant to the lawsuit.

If the person who has the documents you want is a party to the lawsuit, you must follow Rules 34(a) and (b). Under Rule 34(a), any party can serve another party: (1) a request for production of documents; (2) a request for production of tangible things; or (3) a request for inspection of property. Each request for document production should be numbered separately and signed in accordance with Rule 26(g)(1). There is no limit to the number of requests, as long as they are not unreasonable or unduly burdensome.

If you have been served with a request for production of documents, you must give a response within 30 days (unless you obtain an extension from the opposing party or the Court). If you object to a request, you must state the reason for the objection.

Rules 34(c) and 45 cover obtaining documents from persons not party to the lawsuit. Under Rule 34(c), you can ask the Court to compel a person who is not a party to the lawsuit to produce documents and items or submit to an inspection.

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5.03 | DEPOSITIONS (RULE 30)

Depositions are question and answer sessions that takes place outside the hearing of the Court, but are recorded by a court reporter. The person being deposed is under oath (the "deponent"), and that person may be a party, non-party eye witness, or expert witness. The deponent answers all questions under oath, meaning that he or she swears that his or her answers are true.

The party seeking to take a deposition should confer with opposing counsel and the deponent to choose a convenient time and place for the deposition. The party asking for the deposition must then prepare a notice of deposition and serve the notice on all parties.¹¹ You may ask questions of the deponent about any non-privileged matter that is relevant to the claims or defenses of any party. The party taking the deposition must pay the cost of the court reporter. After the deposition, the parties must obtain a copy of the transcript from the court reporter themselves.

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Footnotes

¹¹ Specific instructions for a notice of deposition is contained in Federal Rule of Civil Procedure 30(b).



5.04 | REQUEST FOR ADMISSIONS (RULE 36)

In a "Request for Admissions," one party can ask the other party to admit the truthfulness of facts related to the lawsuit. The Court will consider anything admitted in response to a request for admission as proven. Requests for admission may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure, including service by mail.

If you are responding to a request for admissions, you must admit or deny the request or explain in detail why you cannot truthfully admit or deny it. If you do not know the answer, then you must state that you do not have enough information to admit or deny the request, but you must first make a reasonable search for the information. Remember, any matter that is admitted is treated as a proven fact within the context of this particular lawsuit.

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5.05 | MENTAL OR PHYSICAL EXAMINATIONS (RULE 35)

When the mental or physical condition of a party, or a person under the custody or legal control of a party, is at issue in a lawsuit, Rule 35 of the Federal Rules of Civil Procedure allows the Court to order that person to submit to a physical or mental examination. The examination must be done by a suitably licensed or certified examiner, and the party who requested the examination must pay the examiner. The examiner is not responsible for treating the person and any communications with the examiner are NOT confidential. Unlike other discovery procedures, physical or mental examinations can be obtained only by filing a motion with the Court or by agreement of the parties.

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5.06 | DISCOVERY DISPUTES

Sometimes, the parties will disagree about the disclosures, discovery, or objections filed. The Federal Rules require the parties to meet and confer to try to resolve the dispute before filing a motion to compel with the Court. Under Rule 37(a)(2), a motion to compel a party to make disclosures or to respond to discovery must be filed in the Court where the lawsuit is pending. A motion to compel MUST include:

1. A certification that have tried in good faith to resolve the problem without help from the Court; AND
2. An explanation of the problem and what you want the Court to do; AND
3. If the problem involves discovery, the complete text of each disputed discovery request immediately followed by the complete text of the objections or disputed responses to that request; AND
4. An explanation of the facts AND law that make it appropriate for the Court to grant your motion.

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APPENDIX



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