

7.05 | DISCLOSURES AND DISCOVERY

Disclosures of facts are often made during a lawsuit. Some disclosures are required while others are not. If you are wondering whether you or another party must disclose a fact, consult the rules and the law for guidance. Rule 26 of the Federal Rules of Civil Procedure is a good place to start.

Discovery is the process by which parties exchange facts relevant to the case. A party may not seek discovery from the court. A party may not seek discovery until after the case management conference discussed in the above section, "Case Management."

There are rules regarding discovery just as there are rules for other court processes. A party can get facts from another party by asking for them. There are several ways to do this:

- **Interrogatory.** An interrogatory is a written question to the other party for information that will prove or disprove a fact. A response to an interrogatory must be in writing and under oath. Interrogatories are governed by Rules 26 and 33 of the Federal Rules of Civil Procedure.
- **Request for Production.** A request for production is a written request to the other party for a copy of a document or access to any other tangible thing that will prove or disprove a fact. Requests for Production are governed by Rules 26 and 34 of the Federal Rules of Civil Procedure.
- **Deposition.** A deposition is an in-person, recorded, question-and-answer event used by a party to ask the other party or a witness questions about the facts surrounding the action. A party seeking the deposition of another party should try to work with the schedules of others and, at a minimum, must serve 14-days advance notice of its time and place. A party seeking the deposition of a non-party may request a subpoena from the clerk's office and serve the summons on the non-party. The party setting the deposition hires and pays for a court reporter to transcribe the deposition. Depositions are governed by Rules 26, 30, 31, 32, and 33 of the Federal Rules of Civil Procedure.
- **Request for Admission.** A request for an admission is just that – a written request to another party asking him or her to admit a fact important to proving a claim or narrowing the issues. A response to a request for admission must be in



writing and under oath. Requests for Admission are governed by Rules 26 and 33 of the Federal Rules of Civil Procedure.

A party must not file a discovery document with the court unless the document is used during a hearing or at trial, is necessary for a motion (such as a motion to compel discovery or for summary judgment), or the court orders the document to be filed.

Parties may share information informally, and they often do so when trying to negotiate a settlement of their claims so they can avoid the time and cost of continuing with the lawsuit.

The discovery process may not be used to harass; it must be used in a manner that is efficient, effective, and fair. Rule 26 of the Federal Rules of Civil Procedure requires that discovery be proportional, so the relevancy of the material, the burden of obtaining and producing the material, and the amount or importance of the action are all considered in determining whether the discovery is appropriate. If the court grants a motion to compel discovery, the court must order the other side to pay expenses in bringing the motion unless certain circumstances apply.

The court publishes a handbook on civil discovery practice. The handbook is not law, and therefore is not binding. But it is highly persuasive and, as a general overview of discovery practice in this court, serves as a helpful resource for litigants and lawyers alike. You can view the form at the clerk's office or on the court's website:

www.flmd.uscourts.gov/sites/flmd/files/documents/mdfl-guide-for-proceeding-without-a-lawyer.pdf

A party who violates disclosure and discovery obligations may be sanctioned. The sanctions vary but can include dismissal and an award of an attorney's fee to the other side.