

Pro Se Guide to Discovery in DC Family Court



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Please note, every case is unique, and discovery will look different in every case. There are multiple discovery tools you can use. Please consult with an attorney for assistance in understanding and conducting your own discovery.

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What is Discovery?

What is discovery? Discovery is the exchange of information and facts in a case between the parties that may be helpful to prove claims or defenses. It is also helpful in knowing what witnesses and documents the other party may present at trial.

How does discovery happen? This happens when one party asks the other party for information. This can also happen when you need to subpoena a witness/documents or depose a witness. Discovery helps you build your case!

*The judge or magistrate judge may require that the parties exchange information pursuant to Rule 26(a)(1)(A); DR Rule 16(b)(2). If so, the judge may order this verbally in court or issue a court order. It is important to read and follow ALL court orders.

Most common types of discovery are:

- ❖ Interrogatories
- ❖ Requests for Production of Documents
- ❖ Requests for Admissions
- ❖ Depositions
- ❖ Subpoenas



What is the scope of discovery?

What are the limits on discovery?

Unless the judge sets other limits, parties may obtain discovery regarding any nonprivileged matter that is **relevant** to a claim or defense of any party, and is proportional to the needs of the case, considering:

- ❖ the importance of the issues in the case
- ❖ the amount in controversy in the case
- ❖ your access to information relative to the opposing party's, and your resources
- ❖ the importance of the discovery in resolving the issues, and
- ❖ whether the burden and expense of the proposed discovery outweighs its likely benefit.
- ❖ See DR 26(b) and consult an attorney for any clarification.

You can issue discovery once the case starts. The judge may set deadlines for when discovery closes. It is important to pay attention to these deadlines.

If you are served with discovery requests at any point, do NOT ignore them! You must respond within a certain time period or there could be consequences that negatively impact your case.

*****Please refer to the pro se forms to reply and/or
consult with an attorney.***

Scheduling Discovery



- **When can discovery be issued?**
 - Discovery can be issued any time after the case starts. Once discovery is issued, the other party has 30 days to respond, unless the parties and/or judge allow an extension.

- **Can I issue more than one set of discovery?**
 - Yes, you can issue multiple sets of discovery as long as you issue the additional requests before the “Close of discovery.” If you have more questions, you can issue a “second, third, etc.” set of questions.

- **Will the judge help with scheduling?**
 - Judges will often help the parties by setting specific deadlines. The parties and/or lawyers may agree to certain deadlines as well. For example, a judge may order the parties to issue discovery by a certain date or respond by a certain date. Sometimes the judges “close” discovery on a specific date so the case can move forward towards trial.

After talking with the attorneys or parties, the judge may set dates for the following:

- Discovery Requests
- Discovery Answers
- Depositions
- Subpoenas
- Exchanging Lists of Fact Witnesses/Exhibits
- Disclosing Expert Witnesses
- Filing Motions
- Close of Discovery

Types of Discovery

What are Interrogatories?

Interrogatories are written questions that each party may serve on the other party to gain information about the case. Interrogatory responses are under oath. Interrogatory answers can be used at trial to impeach the other party when they are testifying. DR Rule 33.

Questions about Interrogatories...



- **How many questions can I ask/can the other party ask me?**
Interrogatories are limited to 40 questions.

TIP: Your interrogatories should be in a numbered list for the other party.

- **Who answers my questions?** Interrogatories must be answered by the party to whom they are directed. If that party is a public or private corporation, a partnership, an association, or a governmental agency, they should be answered by any officer or agent who is able to give the information.
- **When does the other party need to reply to my questions?** The responding party must return its answers and any objections within **30 days** after being served with the interrogatories.
- **How long do I have to respond to interrogatories?** You must return your answers and any objections within **30 days** after being served with the interrogatories.
- **What if they ask for more time/I need more time to respond?** One party can agree to allow the other party more time to submit the responses.
- **What if I think of more questions later?** You can issue a second, third, etc. set of questions (but you cannot go over 40 total questions).

- ***What if they do not answer my questions?*** You can send another request, ask to meet about the discovery, and eventually file a Motion to Compel.

A few things to know...

- You must answer each interrogatory separately in writing (remember, you are under oath).
- If you have an objection to an interrogatory, you must explain why you object to the question. You must put your objection in writing. If you object to only to part of the interrogatory, you must state why and then answer the other part of the question you do not object to. For a list of common objections, please refer “Common Objections.”
- If you do not understand what is being asked in the question, you should ask the opposing party and try to discuss it with them first. If you cannot reach a common understanding, you may have to ask the judge for clarification or for a remedy.
- If the opposing party believes that your objection is incorrect or unreasonable, he/she can ask the judge to order you to respond. You can then explain your position.
- You must answer interrogatory questions to the best of your ability with all the information available to you. You must look for the answer to an interrogatory if it can be found in your records or some other available place.
- If you want to update your answer(s) and/or you learn something new that would change your answer to an interrogatory, you must let the other party know. You can file a second, third, etc. round of responses called “Supplemental Discovery.” Your amended/supplemental answers will be under oath.

Types of Discovery

What is a request for a production of documents?

A request for production of documents allows you to receive documents or tangible things, or inspect documents, electronically stored information, or physical objects relevant to your case. Document requests can be served on anyone, not just parties to the lawsuit. ***Your requests should be in a numbered list.*** DR Rule 34.

You can ask for things/inspect things such as, but not limited to, designated documents (bank statements, etc.) or electronically stored information – including writings, drawings, charts, photographs, images, etc.; any designated physical things (for you to inspect, copy, test, or sample), including physical objects that are not documents, or property (for you to inspect, photograph, or measure).

Questions about Requests for Production of Documents...

- **How many questions can I ask/can the other party ask?** There is no limit in the rules, but the number of questions must be reasonable.
- **When does the other party need to reply to my questions?** The responding party must respond and provide any objections within **30 days** after being served with the requests.
- **How long do I have to respond to requests?** You must respond and provide any objections within **30 days** after being served with the requests.
- **What if I think of more questions later?** You can issue a second, third, etc. set of requests.

- ***What if they ask for more time/I need more time to respond?*** One party can agree to give the other party more time to respond.
- ***What if they do not answer my questions?*** You can send another request, ask to meet about the discovery, and eventually file a Motion to Compel.

A few things to know...

- You must produce the requested documents either at the time stated in the request or at another reasonable time that you specify in your response.
- You must produce the documents in the form in which they are ordinarily maintained, or in reasonable usable form, unless otherwise specified in the request.
- You should organize and label the documents to correspond with the categories in the request.
- You must respond in writing to every individual document request. You can either produce the document or object to the request.
- You can object to part of a request, or the full request, but you must state a specific reason for each objection in writing and answer the part of the request that you do not object to.

Types of Discovery

What is a request for admission?

In a **request for admission**, you can ask the other party to ADMIT or DENY questions, specified facts, or the genuineness of specified documents. These responses are under oath. This is an opportunity to settle any uncontested facts and simplify the trial proceedings. **Your requests should be in a numbered list.** DR Rule 36.

Questions about Interrogatories...

- **What can I ask about?** You can request an admission to things such as, but not limited to, facts, the law that applies to the facts, events that happened, cases pending, property owned, the realness of documents, etc.



TIP: You should not ask questions that you do not know the answer to or cannot prove.

- **How many questions can I ask/can the other party ask?** The rules do not limit the number of admissions. There should not be so many requests that it burdens the other party.
- **When does the other party need to reply to my questions?** The responding party must respond and provide any objections within **30 days** after being served.
- **How long do I have to respond to their questions?** You must respond and provide any objections within **30 days** after being served.
- **How can what's admitted be used for the case?** Both parties can admit to the truth of a fact or validity of a document. The court will then treat that fact or document as true. If someone admits or denies a question, and you can prove they lied, you can use the discovery to impeach them in court.

- ***How do I respond to requests for admission?*** You may admit or deny the matter. You may also state in detail why you cannot truthfully admit or deny it. You may also clarify that you admit one part and deny the rest. You may deny requests for admissions that you do not believe to be true. You can also object to the question.
- ***What if I think of more questions later?*** You can issue a second, third, etc. set of admissions.
- ***What if they ask for more time/I need more time to respond?*** One party can agree to give the other party more time to respond.
- ***What if they do not answer my questions?*** You can send another request, ask to meet about the discovery, and eventually file a Motion to Compel.

A few things to know...

- You can ADMIT or DENY in full or in part.
- If you do not respond to a request for admission within the time frame, the matter will be considered admitted.
- You must state the grounds for objecting to a request in writing.
- If the other party later proves that the fact is true or the document is authentic, that party may make a motion, seeking reasonable expenses like attorney's fees that resulted from proving the matter and it will hurt your credibility!
- Requests for admission should be in good faith.

Types of Discovery

What are depositions?

A deposition is the taking of an oral statement of a witness before trial, under oath. Both parties are there (with their attorneys and a court reporter). There will be a transcript of the deposition that can be used at trial. However, no judge is present at the deposition. DR Rule 30.

*****Consult an attorney if you plan to conduct a deposition
or if you are being deposed.***



Types of Discovery

What is a subpoena?

Subpoenas are used to obtain evidence from individuals, corporations and other entities who are not parties to a lawsuit. You can request that they provide documents or that a person appears in court to testify. DR Rule 45.

****Use the form at DC Superior Court.**

SUBPOENA

Superior Court of the District of Columbia
CIVIL DIVISION

Check One:

Civil Actions Branch
500 Indiana Ave., N.W.
Room 5000
Washington, D.C. 20001
Telephone: (202) 879-1133

Landlord & Tenant Branch
510 4th Street, N.W.
Room 110
Washington, D.C. 20001
Telephone: (202) 879-4879

Small Claims & Conciliation Branch
510 4th Street, N.W.
Room 120
Washington, D.C. 20001
Telephone: (202) 879-1120

Plaintiff

v.

Defendant

To: _____

SUBPOENA FOR A CIVIL CASE
(For Pro Se Litigants Only)

CASE NUMBER: _____

Check box if medical records are being requested

YOU ARE COMMANDED to appear in this Court at the place, date, and time specified below to testify in the above case.

COURTROOM AND ADDRESS	DATE	TIME
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YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE	TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition must designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which each person will testify. Super. Ct. Civ. R. 30(b)(6).

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

DOCUMENTS OR OBJECTS


PLACE OF PRODUCTION	DATE	TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date, and time specified below.

PREMISES	DATE	TIME
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WITNESS, the Honorable Chief Judge of the Superior Court of the District of Columbia, and the seal of said Court this _____ day of _____, 20____.

Clerk, Superior Court of the District of Columbia



Authorization as required by D.C. Code §14-307 and *Brown v. U.S.*, 567 A.2d 426 (D.C. 1989), is hereby given for issuance of a subpoena for medical records concerning a person who has not consented to disclosure of the records and has not waived the privilege related to such records.

JUDGE

(See Super. Ct. Civ. R. 45 (c) and (d) on the reverse side)
WHITE - FOR RETURN OF SERVICE YELLOW - FOR SERVICE

Serving A Subpoena: The Steps

Determine what the subpoena is to be used for:

- Command for a deposition/witness
- Command to produce documents/evidence
- Command to produce electronically stored information



Fill out a subpoena form with the necessary information:

- state the name of the court;
- state the title of the action, its case number, the calendar designation when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge;
- command each person to whom it is directed to do the following at a specified time and place within the District of Columbia



Have subpoena signed and issued:

- An attorney authorized to practice in the District of Columbia may issue and sign a subpoena.
- A party not represented by an attorney may obtain from the clerk and complete a blank subpoena, and submit it to the clerk to be signed



Serve the subpoena on the intended party:

- Any person who is at least 18 years of age and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for one day's attendance and the mileage allowed by law, except if otherwise granted by the court

Serving, Filing, and Answering Discovery

Who do I send the requests to?

- If the other party has an attorney, you must serve the requests on their attorney. If they do not have an attorney, you will serve them on the other party.

What do I file?

- You **ONLY** file the Certificate of Discovery (NOT the actual discovery requests that you sent to the opposing party).

How much does it cost?

- Serving interrogatories, requests for production of documents, and requests for admissions are free. There is no filing fee.

What if I do not want to answer certain questions or provide specific documents?

- Disagreements about discovery are not uncommon. All parties must carry out discovery in **good faith**. This means that they must try to settle disagreements between themselves, for example, by discussing the matters in a telephone call or a meeting, before seeking assistance from the judge.
- You can object. **Please see “Common Objections” for examples.**

How do I tell the other Party that I disagree or object to their question(s)?

- You can write in the answer space that you **object** to the question in total or in part. You can do this by stating what your objection is and why you object to the question. **Please see “Common Objections” for examples.**

What if the other Party objects to my questions?

- You can respond to their objection and state why you disagree with the objection. If you and the other party cannot resolve the difference in good faith, you will likely need to file a Motion to Compel and ask the judge to help resolve the objection.

COMMON OBJECTIONS TO DISCOVERY REQUESTS

1. INTERROGATORIES EXCEED ALLOWABLE NUMBER

I object to this request because the total number of interrogatories together with their sub parts exceeds the maximum allowable number of interrogatories under the rules.

2. UNDULY BURDENSOME/EXCESSIVE REQUESTS/DISCOVERY

I object to this request because it is unduly burdensome.

I object to this request because it is unreasonable, unduly burdensome, oppressive, and expensive.

3. INFORMATION ALREADY SUPPLIED

I object to this discovery request because the information requested has already been provided.

4. REQUIRES PRODUCTION OF DOCUMENTS NOT IN EXISTENCE

I object to this request because it is asking for documents that are not in existence.

5. ALREADY WITHIN THE KNOWLEDGE OF REQUESTING PARTY

I object to this question because the information is already within the knowledge or control of the requesting party.

6. INFORMATION EQUALLY AVAILABLE TO REQUESTING PARTY

I object to this question because the requested information is readily or equally available to the requesting party.

7. REQUEST FOR PRODUCTION TOO BROAD

I object to this request to the extent that it is overly broad and unduly burdensome.

8. QUESTION IS VAGUE

I object to this request to the extent it is vague and ambiguous.

9. PURPOSE TO HARASS

I object to this request because it is intended to harass and to cause unnecessary and needless increase of the cost of litigation to myself.

10. IMPROPER PURPOSE

I object to this request because it appears to be for an improper purpose.



Pro Bono Center

I object to this request because it is made to cause annoyance, embarrassment, oppression, undue burden or expense.

11. OUTSIDE THE SCOPE OF DISCOVERY

I object to this request because it is beyond the scope of discovery.

12. REPETITIVE REQUEST

I object to this request because it is duplicative and covered by other discovery requests.

13. DOCUMENTS NOT IN POSSESSION OF PARTY

I object to this request because it asks me to produce documents and/or information which are not currently within my possession, custody, or control.

14. NOT RELEVANT

I object to this discovery request because it is not relevant to the subject matter in the pending action and is an irrelevant inquiry.

15. WILL NOT LEAD TO ADMISSIBLE EVIDENCE

I object to this request because it is not designed to obtain information reasonably calculated to lead to the discovery of admissible evidence.

16. ATTORNEYS WORK PRODUCT

I object to this request because is asking for work that my attorney did (attorney's work product and trial preparation, theories of the case and other privileged matters).

17. QUESTIONS MORE PROPERLY ADDRESSED TO EXPERT

I object to this request because these types of questions are more properly addressed to an expert.

18. PRIVILEGED

I object to this question to the extent the information you are requesting is privileged.