

DISCOVERY IN LITIGATION

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The trend is towards increasing litigation. If you or your company have not already jumped into the fray, there is a good chance you will be drawn in.

Most people have a general idea of what happens at the start of litigation (i.e., a lawsuit or "complaint" is filed), and what hap-

pens at the end (i.e., a trial). Until getting involved in litigation, however, not much focus is given to the middle stage: discovery.

The discovery stage is where the bulk of the time and expense of litigation are incurred. Being familiar with the discovery process and options will make you a better consumer of litigation services, and may make the process more efficient.

Discovery is the means through which parties in litigation exchange information. That information is used to assist in evaluating and resolving the underlying dispute. And, if that fails, the information is used as evidence at trial.

There are four basic ways of obtaining information through the discovery process: interrogatories; requests for production; request for admissions; and depositions.

1. INTERROGATORIES. Interrogatories are written questions that must be answered under oath. They can be useful to obtain basic information to understand or clarify

the opposing party's position and to frame your "discovery plan." Examples of useful interrogatories are:

- Identify all witnesses with information relevant to your claim that ABC Corp. breached its contract with you.
- State with particularity all facts supporting your claim that ABC Corp. breached its contract with you.


Interrogatories are not generally useful for attaching the opposing party's position through critical questions or cross-examination. Although signed by the opposing party, attorneys play a large part in preparing the answers. So, it is unlikely that you will get an unguarded answer.

2. REQUESTS FOR PRODUCTION. These require your adversary to provide you with the opportunity to inspect and copy records relevant to the dispute. You also can request to inspect things (like equipment or products) or places (like the location of an accident or a construction project), if there is some potential relationship to the dispute. Documents can also be obtained from third parties through a subpoena.

3. REQUESTS FOR ADMISSIONS. As suggested by the name, requests for admissions require a party to admit or deny that a specific fact is true. Examples include:

- Admit that Exhibit A is a true and accurate copy of the contract between ABC and XYZ.
- Admit that XYZ installed the landscaping on the project.

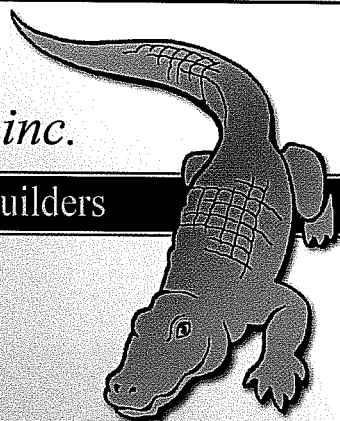
Requests for admissions are useful to narrow the issues in dispute and make trials more efficient.

4. DEPOSITIONS. Depositions provide the opportunity for your attorney to ask questions of witnesses (the opposing party or others with relevant information). The questions are answered under oath and are transcribed by a court reporter. The transcribed deposition testimony can be (i) filed to support or oppose motions, (ii) used to impeach a witness at trial if the witness contradicts their deposition testimony; or (iii) in some cases can be offered as evidence at trial. Unlike interrogatories (which are prepared with lawyer assistance) questions in depositions are answered by the witness without any real opportunity to "rehearse" a good answer. They, therefore, are an effective way to assess how well a witness will perform at trial, and also are useful at developing valuable "admissions" for use at trial. **CONCLUSION:** Strategic use of each of these discovery tools can streamline trial preparation and create leverage for negotiation. 

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