Ask written questions and request documents in discovery

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Read this to learn about the discovery process in a court case, including how and when to answer discovery requests, and what you can do if you want or need to get more information from the other party about their side of the issues before you go to trial.

What is discovery?

If you're a party in a contested civil (non-criminal) case, such as a family law case, you or the other party may want or need more information before trial about the other person's side of the story. You can try to get that additional information through a process called **discovery**. "Doing discovery" allows one party get any information from the other party that is related to (relevant to) the case. You don't need to file a motion or otherwise get court permission to do discovery.

> You're a "party" to a case if you filed the case or received court papers naming you a Respondent. It's possible to use the discovery process to get information from someone who isn't a party to the

case, like the other party's employer or bank. But it's hard to do that without a lawyer.

"Contested" means you and the other party to the case disagree.

The state court rules, or Civil Rules (CR), for discovery are CR's 26 (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_26_00_00.pdf) through 37 (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_37_00_00.pdf). The court where your case is filed may also have its own, local rules (https://www.courts.wa.gov/court_rules/?fa=court_rules.localsupbycrt). You can also find your county's local rules by talking to the court clerk or, if your county has one, the court facilitator (https://clark.wa.gov/clerk/family-court-facilitator).

Why should a party to the case do discovery?

There are 2 good reasons:

1. To find out what evidence and arguments the other party might use in their case.
2. For use at trial, if what the other party says on the stand is very different to the answers they gave you in discovery. Or you can make sure they keep their story straight.

Discovery can also help you decide how good the other party's case is and if you should try to come to some sort of agreement instead of having a trial.

Here are some examples of cases where discovery would be helpful:

Example 1: Child support is an issue. The other parent is self-employed. You believe the other parent has understated their income. It would help to have proof of where the other party worked in the past year, and how much each job paid. It would also help to see documents showing what the other party claims about their finances, such as past tax returns, bank statements, and profit and loss statements.

Example 2: Due to the parent's recent behavior, you're concerned about the children's safety when they're with the other parent. Depending on your reasons, you might want to see proof of completion of drug or domestic violence offender treatment, or evaluations by treatment providers.

> If your family law case has a Guardian ad Litem or Family Court investigator, you can give them copies of whatever information you get through discovery that may help your case.

Are there different ways to do discovery?

Yes. We don't cover them all here**.** Here are 2 ways to do discovery -- these are often combined in 1 request:

Written questions ("written interrogatories") (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_33_00_00.pdf): A person who receives interrogatories has 30 days to respond to them in writing. You must answer each interrogatory separately and fully in writing under oath, unless you believe there's a legal reason not to answer it (you object to it). You must explain why you object. You must sign your answers and objections.

Requests for documents ("requests for production" (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_34_00_00.pdf) (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_34_00_00.pdf)): Someone who receives a Request for Production of Documents has 30 days to provide the documents. "Documents" includes electronically stored information like computer files, voice mails, emails, web pages, and text messages.

We **don't** cover depositions or Requests for Admission (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_36_00_00.pdf) here. Talk to a lawyer if you receive Requests for Admission or if you want to serve the other party with these.

> If you receive written questions or requests for documents, you can adapt the questions and requests you received to use as your own discovery requests to the other party.

Are there other ways to get information besides doing discovery?

Yes. Here are some:

- Search courthouse records.
- Search other public files. For example, you can look for what property is listed in a party's name (deeds). You can find out the property's taxable value and if there are any liens on the property. You can check the other party's license filings (https://dol.wa.gov/), such as drivers or professional license. You can check to see if the other party owes property taxes. You can get information about vehicles and mobile homes you and the other party own or have owned together.

- Talk to other people who know the other party and don't have lawyers. (If someone is represented by a lawyer about an issue, you must talk to the lawyer.)
- Get police reports if you were the victim of a crime, especially if it involved the other party.
- Request CPS records from the Department of Children, Youth and Families about your children.

How do I get my discovery requests to the other party?

The law calls it "serving" discovery. It isn't like serving court papers. You can, but don't have to, file a Proof of Mailing or Hand Delivery with the court so that you have a record that the other party received your discovery requests.

To serve discovery, ask a friend who isn't a party to the case to mail 2 copies of the interrogatories or requests for production to the other party, or their lawyer, if they have one. Save a copy of your requests for yourself. **The other party then has 30 days from the time they get your discovery requests to answer in writing** on the forms you sent.

How can I use discovery answers at trial?

You must first make sure you know very well what the discovery answers say before trial. You must also learn how to submit the discovery answers to the trial judge so the judge can read them as well. Depending on the judge hearing your case, this could be complicated.

You might be able to get a lawyer to help prepare you to represent yourself for trial in this way. Some lawyers will do this type of "unbundled" work for a small fee or for no charge.

Once you're at trial, listen carefully to what the other party says when they're on the witness stand. They're under oath. They must tell the truth.

If what they say is very different from any answers that they gave you, you can use the other party's discovery answers to point their inconsistency out to the judge. If it happens too many times, you might tell the judge the other party may have a problem telling the truth about important issues.

Try to talk to a lawyer for more help.

The other party missed their deadline to respond to my discovery requests. Now what?

First, you must have a "discovery conference." (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_26_00_00.pdf) This just means you must try to talk to the other party to work something out. Send the other party a letter or email asking that they respond or contact you by a certain date. Keep a copy of the letter or email as proof that you tried to work out getting your responses. If the other party has a lawyer, send your letter to the lawyer. Your letter can say something like this:

> Dear [*name*]:
>
> I'm writing because I sent you discovery requests on [*date you sent them*]. You should have sent me answers to my requests by [*deadline that other party has missed*].
>
> Please call or write me by no later than [*new deadline*] to talk about this. If I don't hear from you by this date, I may have to file a Motion

to Compel.

If the other party still doesn't give you answers to your requests, and has no good reason, you can file a Motion to Compel (https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_37_00_00.pdf). This motion asks for a court order forcing the other party to give you your answers. You can also ask the judge to order the other party to pay your attorney's fees or find the other party in contempt.

We don't have forms for a Motion to Compel. Try to talk to a lawyer.

I received a request for production from the other party. What if I can't give them what they asked for?

If you have good reason, you can object. An objection is also a type of answer. It isn't just ignoring the question and not saying anything in response. Here are some good reasons to object to a request:

- **Relevance** – You think what they asked for isn't relevant to the case. **Beware**: "Relevant" can be anything related to your case. It doesn't have to be the most important information to your case. You must explain in writing why the question isn't related to the case (why it's irrelevant). You must still answer all relevant questions.
- **Privilege** – Something they asked for is a letter or e-mail between you and a lawyer, doctor, counselor, or domestic violence or sexual assault advocate.
- **Work product** – You don't have to give them any work a lawyer did on your case to get ready for your case or for trial. This protects things like the lawyer's legal research and the lawyer's correspondence with your

witnesses or experts.

- **Trade secrets and confidential research** – The other party must show this is relevant and they need it to be able to put on their case.
- **Not within your possession or control** – You don't own what the other party asked for. You can't get a copy of it. For example, in a custody case, the other party wants the mental health records for your now-18-year-old child. The other party thinks these records will show that you've been a bad parent to the younger children still in your home. You can't get those records if your adult child won't agree to release them to you.
- **Unduly burdensome or overly broad** – They're asking for too much, or it would take too much time and effort to answer or cost too much. Try to talk to a lawyer if you think this applies to you.

Can I just not answer the other party's discovery requests?

You must give the other party very good reasons that you're not answering their discovery requests. Otherwise, the other party can file a Motion to Compel forcing you to answer. They may also ask the judge for attorneys' fees or to find you in contempt.

If you receive a Motion to Compel, you must file a Declaration to respond to the motion or answer the requests. Try to talk to a lawyer.