

Discovery

In Section III, we discussed gathering basic financial information and data. After you have done so, you and your attorney should then proceed with formal Discovery.

Discovery is a variety of processes which are designed to accomplish exactly what the word implies: to discover additional information or factual data. The scope of discovery is very broad. Simply stated, the rule is that you can ask for anything which is relevant "or may lead to relevant information." There are various types of discovery. Some of the most common are:

A. Interrogatories - Interrogatories are written questions which you submit to your spouse which must be answered in writing and under oath. There is a tendency to ask broad, all encompassing questions, in order to avoid the risk that something may be overlooked. However, many times such an approach to discovery is ineffective and unproductive. On the contrary, carefully phrased, very specific questions are more likely to produce specific responses which will be helpful to you and your attorney.

B. Request for the Production of Documents - Requests for the Production of Documents requires your spouse to produce any documents, or other items, which are relevant to the case and which are either in their possession or subject to their control such as: employment records, bank or brokerage accounts which are in their name, pension and IRA account statements, photographs or videos.

C. Oral Depositions - In some states, this proceeding is called an Examination Before Trial. That is exactly what it is. It is your attorney's opportunity to examine or to take testimony from your spouse or any other witness before trial. They are placed under oath so that all of their answers are "sworn testimony." The proceeding is in the presence of a Court Reporter who records the questions and answers verbatim. The questions and answers of your spouse are evidential and can be submitted directly into evidence at the time of trial. For other witnesses, they can be very valuable tools to confront and contradict conflicting statements made at the time of trial.

Very often clients are concerned that their spouse will not respond to interrogatories or notices to produce and/or will stall, delay or refuse to appear for an oral deposition. Those are understandable, but not reasonable concerns. The Court will enforce reasonable discovery requests, and will be very impatient with a party who has frustrated or unreasonably delayed discovery. Upon an application by your attorney, the Court may:

- A. Limit or bar a person's trial testimony if they have not cooperated with discovery;
- B. Assess counsel fees against the offending party; or
- C. In some instances, impose monetary sanctions and penalties against the offending party.

Remember: Discovery is a "two-way street." While on one hand you have every right to require your spouse to participate in Discovery, you, on the other hand, have the corresponding obligation to respond to all reasonable requests from your spouse.

If properly conducted, Discovery will provide both parties with an information base to allow them to negotiate fairly and intelligently and, if possible, enter into a Settlement Agreement.