

DISCOVERY



Metropolitan Court - Civil Division

This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS DISCOVERY?

Discovery is a process that allows a party in a lawsuit to gather any type of information from any source, such as, other parties, persons, witnesses, or companies that can then be used to support or defend a party. The information is also used to reduce any surprise witnesses, exhibits or other evidence at the time of trial.

A party in the lawsuit may obtain any information regarding any matter, not privileged, which is relevant to the lawsuit. Any fact, document or thing that is reasonably calculated to lead to the discovery of admissible evidence can be requested.

In the Metropolitan Court, **Discovery** is generally limited to the parties' exchange of *Exhibit and Witness Lists* along with copies of documents that each party is going to present at trial.

In Metropolitan Court, any party can request that discovery be allowed.

TYPES OF DISCOVERY AVAILABLE

- **Depositions:** The recorded testimony of a party or witness under oath, which either party may use later in Court.
- **Interrogatories:** A set of written questions submitted to a party named in the lawsuit that **must** be answered under oath.
- **Request for Production of Documents:** A written request to a party named in the lawsuit to produce or make available for copying, documents pertaining to the case.
- **Request for Admissions:** A written request to a party in the lawsuit to either admit or deny certain facts.
- **Inspection or Permission to Enter Property:** When the condition of real or personal property is an issue in a lawsuit, a request to permit inspection or to enter upon land can be used to examine, view, measure, survey, test, or photograph the property of a party.
- **Physical and/or Mental Examination:** If an issue in the case involves the physical or mental health of a party, **then and only then**, can a party request a Physical and/or Mental Examination. A medical professional **must** perform the examination.

HOW DOES A PARTY REQUEST DISCOVERY?

In the Metropolitan Court, if a party wants **Discovery**, the party must first file a *Motion for Discovery*, which describes the information that the party is requesting. The Judge will review the *Motion for Discovery* and either grant or deny the motion or schedule a short hearing about the discovery being requested.

HOW TO CONDUCT DISCOVERY

Discovery is a technical process, which is fully described in the **Rules of Civil Procedure for the DISTRICT COURT Rules 1-026 through 1-037**. If the Judge permits **Discovery**, the parties are required to know these Rules. The following **briefly** describes **some** of the procedures to conduct **Discovery**.

Note: Any time you send a pleading to one party, you must send a copy of that pleading to all of the other parties in the case.

Depositions: A **Deposition** is an opportunity for the parties to question a person. The party requesting a **Deposition** should contact all parties and the person (“Witness”) who is to be questioned to set a time and place convenient for everyone to attend the deposition. The party requesting a **Deposition must** then mail to all parties, the **Witness** and file with the Court a *Notice* stating when and where the **Deposition** will take place.

If the **Witness** is **not** a party in the lawsuit, the person requesting the statement also **must** serve the **Witness** with a *Subpoena* and a **witness fee** to appear and **must** file proof of service of the *Subpoena* with the Court. The party requesting the **Deposition must** provide a certified court reporter that will make a record of the **Deposition**.

The party requesting the **Deposition** usually questions the **Witness** first. When finished, the opposing party may ask the **Witness** questions. When all questions have been asked, the **Deposition** is finished. If disagreements arise over questions asked or answers given that cannot be resolved **peacefully**, each party should note the objection on the record and move on to another topic. The party can ask the Judge to review the record and resolve the dispute. The parties **shall not** be abusive towards the **Witness or each other** during the **Deposition**.

Interrogatories: With the Court’s permission, a party can mail a limited number of questions (“*Interrogatories*”) to an opposing party. The requesting party **must** provide a copy of the *Interrogatories* and a *Certificate of Service* to all parties in the lawsuit and file the *Certificate* (not the *Interrogatories*) with the Court.

The party to whom the *Interrogatories* are directed **must** answer the *Interrogatories* under oath by a specified deadline (usually 30 days from when the *Interrogatories* were served) and also **must** mail a copy of the *Answers* and a *Certificate of Service* to all parties and file the *Certificate* (not the *Answers*) with the Court.

Requests for Production of Documents: With the Court’s permission, a party may mail *Requests for Production of Documents*, together with a *Certificate of Service*, to the opposing party asking to inspect and/or copy specific documents. The requesting party **must** file the *Certificate* (not the *Requests*) with the Court.

The party on whom the *Requests* are served **must** respond by a specified deadline (usually 30 days from when the *Requests* were served) by making the documents available to the requesting party for inspection and/or copying or by explaining why the documents are not available. The responding party also **must** file a *Certificate of Service* (not the *Responses to the Requests*) with the Court, which shows when and how he/she/it responded to the *Requests* and **must** mail a copy of the *Certificate* to the other parties.

Requests for Admission: With the Court’s permission, a party can mail a limited number of *Requests for Admission* to an opposing party that require a party to admit or deny the truth of any fact, the application of law to any fact, or the genuineness of any document.

The responding party **must** *Answer* the *Requests for Admissions* within a specified time (usually 30 days from service). If the responding party admits the *Requests* or does not *Answer* timely, the facts will be treated by the

Court as having been admitted. Both the party sending the ***Requests for Admission*** and the party responding to the ***Requests*** must send copies of the ***Requests*** and ***Answers*** to all of the other parties and must file ***Certificates of Service*** (not the actual ***Requests*** or ***Responses***) with the Court and send copies of those ***Certificates*** to the other parties.

Inspection of Property: A party can ask the Court for permission to inspect either real or personal property when, for example, the condition of that property is an issue in the lawsuit. A request to permit inspection or enter upon land can be used to examine, view, measure, survey, test, or photograph the property of a party.

Physical and/or Mental Examination: If an issue in the case involves the physical or mental health of a party, **then and only then**, a party may ask the Court for permission to have a physical or mental exam performed on that party. **Only a suitably licensed or certified examiner can perform the examination.** The person who has requested the exam typically pays for the cost of the exam.

USE OF SUBPOENAS

A ***Subpoena*** is an order by the Court for a Witness to appear at a **Deposition**, hearing or **Trial**. A ***Subpoena Duces Tecum*** is an order by the Court for a Witness to appear and bring certain documents or other items. Subpoenas can be used to obtain information from any person or company having information about the lawsuit.

Subpoenas may be signed by an attorney or can be obtained from the Court Clerk's Office. To get a ***Subpoena Duces Tecum*** issued by the Court Clerk, a party **must** provide the Clerk with the name and address of the Witness and a description of the requested documents or items. A party must complete the ***Subpoena Duces Tecum*** in its entirety **before** it will be issued by the Court Clerk. If a party subpoenas a Witness, the party also **must** pay the Witness a **\$95.00 fee** and a mileage fee. If the fees are not paid, the Witness does **not** have to appear at the **Deposition**, hearing or **Trial**. A copy of the ***Subpoena*** or ***Subpoena Duces Tecum*** **must** be mailed to all parties named in the lawsuit **before** it is served on the **Witness**. The **Witness** being subpoenaed **must** be served in the same manner as the service of the Summons. (See pamphlet on ***How to File a Lawsuit***.)

CONSULT AN ATTORNEY

Discovery can be extremely useful in gathering information that can support and/or defend against the claims being made in your case. However, in the Metropolitan Court, you **must** obtain the Court's permission in order to conduct ***Discovery***. The procedures required to conduct ***Discovery*** can be very complicated. Therefore, you are strongly encouraged to consult with an attorney, if you are involved in a lawsuit.

OTHER PAMPHLETS AND FORMS ARE AVAILABLE IN CUSTOMER SERVICE ON THE 1ST FLOOR OF THE COURT, IN THE SELF-HELP CENTER, OR ON THE COURT'S WEBSITE.

NEW MEXICO LAWS, RULES, AND FORMS CAN BE FOUND AT [HTTPS://WWW.NMONESOURCE.COM/](https://www.nmonesource.com/)

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