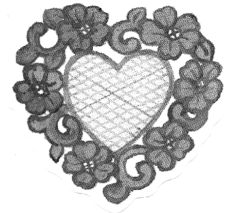




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Happy Valentine's Day



"Tip of the Month"

DISCOVERY METHODS IN LITIGATION

After a lawsuit is filed, the parties have an opportunity to find out what each other's case is about through a process called discovery. The process usually takes two forms, interrogatories and depositions.

Interrogatories. Interrogatories are written questions posed by one party to be answered by the other party in writing under oath within 30 days. Court rules usually limit the number of questions to fifty, though a party can request the Court's permission to ask more questions. Interrogatory questions often have many sub-parts, however, so interrogatories sometimes appear to be asking more than 50 questions anyway.

A **Request for Production of Documents** is usually made part of the interrogatories. Sometimes thousands of documents, including copies of business records, checks, correspondence, internal memos, and even telephone slips, are produced pursuant to interrogatories. Nowadays, interrogatories also routinely request all computer data, files and disks. Interrogatories can also request production of things such as prototypes, tools or machines for inspection. Sometimes the Request for Production of Documents and Things is filed independent of the interrogatories.

A **Protective Order** can be used to keep confidential any documents or things that a party wants to keep secret. The protective order can be established by agreement of the parties, called a Stipulation, or it can be obtained by motion to be granted by the court following a hearing.

Depositions. Depositions are in-person interviews, usually by one party's lawyer of another party or of a witness, answering the lawyer's questions under oath. The interview questions and answers are recorded by a stenographer who later types the deposition transcript. Nowadays, many depositions are recorded on videotape, especially those of expert witnesses. The video can then be presented in trial, instead of the live witness.

The person deposed is called the deponent. A deposition will often include exhibits that are presented to the deponent for discussion during the deposition. Sometimes a person is called to attend a deposition by subpoena that also requires him/her to bring documents or other exhibits to the deposition.

If before a trial a witness dies or otherwise becomes unavailable, the deposition might be read into the record at trial. If a witness in trial testifies in a way that is inconsistent with the answers given under oath in either interrogatories or deposition, the witness could be challenged with the prior inconsistent statement. This might affect the credibility of the witness in the eyes of the jury.

If you would like to learn more about the discovery process, or if you need help with litigation, give us a call at 668-1971 or contact us by e-mail at *Meslaw @ aol.com*.

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