

# Discovery in Justice Court

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## Resources

- Discovery in Civil Cases
  - TRCP 500.9 – Justice Court Discovery
  - TRCP 190-205 – County/District Discovery Rules (Guidance)
  - TRCP 215 – Sanctions for Discovery Violations
- Discovery in Criminal Cases
  - CCP 39.14 – Criminal Discovery Rules
  - Gov't Code Ch. 552.261 – Costs for Providing Public Info

# Discovery in Civil Cases

## The Purpose of Discovery

- To allow parties to obtain full knowledge of the issues and facts of the lawsuit before trial.

*West v Solita, 536 SW2d 240 (Tex. 1978)*

- The objective of Texas discovery rules is to prevent trial by ambush

*Gutierrez v Dallas ISD, 729 SW2d 691 (Tex.1987)*

## What does that mean?

- Parties in lawsuits are entitled to know the information that the other side is going to use:
- What witnesses do they have?
- What documents do they have?
- Do they have other items, like pictures, videos, etc.?

## Justice Court Discovery Definition

- ““Discovery” is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.”

TRCP 500.2(k)

## Pre-Trial Discovery

- Discovery is permitted, but is limited to what the judge considers reasonable and necessary
- The court is the gatekeeper – any requests have to be by written motion and approved by the court
  - The motion must be served on the responding party
  - Unless a hearing is requested, the judge may rule on the motion without a hearing

TRCP 500.9 (a)

## Pre-Trial Discovery

- Cannot serve the discovery unless the judge issues a signed order approving the request
- Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses

TRCP 500.9. (a)

## What NOT to do in Justice Court Discovery

- Standing orders that limit discovery for any reason other than “reasonable and necessary”
- Discovery control plans – those are specifically for higher courts and are more complicated than pro se litigants should be required to follow
- Attorneys on both sides should not automatically equal District Court discovery rules; use your discretion if both parties agree, but they may want the simplified approach

## Things to Consider

- Is the information relevant to the suit?
- Will the information lead to discoverable evidence
- Do the discovery rules permit the type of discovery needed to secure the information
- Should the court limit discovery because it's too expensive, cumulative, or burdensome

## Discoverable: Medical Information

- Medical information to substantiate and collect on a claim for medical service rendered to the patient
- If suing the doctor and the information is relevant to the claims against the doctor

*Mutter v wood 744 SW2d 600 (tTx. 1998)*

TRC 509(e) & (e)(3)

## Discoverable: Fact Witness

- Identity
- Connection with the case
- Witness statements
- Matters not privileged

- TRCP 192.3(a); TRCP 132.5 (c)

## Discoverable: Miscellaneous

- **Settlement Agreements:** In most cases the dollar amount is not revealed because its not relevant

*Ford Motor Co. v Leggat, 904 SW2d 643 (Tex. 1995)*

TRCP 192.3 (g)

- **Photographs:** Still pictures, x-rays, video tapes and motion pictures
- **Income tax returns:** if relevant and material
  - *Hall v. Alwlis 907 sw2d 493 (Tex. 1995)*
- **Insurance and indemnity agreements:** So plaintiff can determine the settlement value of their case
  - *Carroll Cable Co. v Miller, 501 sw2d 299(Tex. 1973); TR CP 192.3 (f)*

## Discovery Objections

- **Not within the scope of discovery**
- **It's outside the scope when it seeks info that isn't relevant AND will not lead to admissible evidence**
  - TRCP 129.3(a); *In re CSX Copr., 124 SW3d 149, (Tex. 2003)*
- **Example of NOT relevant:**
- **How much a party paid to settle other suits can't be discovered, even to help settle a case**
  - *Ford Motor Co. v Leggat, 904 SW2d 643 (Tex. 1995)*

## Discovery Objections

- Will not lead to admissible evidence
- For example, if not asking for punitive damages, cannot ask the company's net worth because would not be admissible
  - *Al Parker Buick Co. v. Touchy* 788 SW2d 129, (Tex.App. – Houston[1<sup>st</sup> Dist.] 1990 orig. proceeding)

## Discovery Objections

- Not reasonably available
- A part is not required to produce information that is not reasonable available to the party when the response is made

## Discovery Objections

- Burdensome, Harassing, or Overbroad
- It would be too much effort or too much of a hardship for a party to respond fully
- Example: all the names of every store you've ever shopped in in your lifetime

## Step 1: File Request and Serve on Other Parties

- A party may submit a discovery request at anytime that a case is filed, including with the filing
- The REQUEST must also be served on the opposing party per Rule 500.9(a), as well as Rule 501.4(a), which reads:
  - “...every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties”

## Step 2: Responding Party May Object

- A hearing may be requested by the responding party after receiving the Request for Discovery
- If a hearing is requested, the Court should set it, notice all parties, and hear any concerns
- If the opposing party does not request a hearing, the Court may sign an order granting discovery without a hearing

## Step 3: Court Order

- We recommend creating an order and sending it with the discovery to all parties
- The order should include:
  - Which, if any, discovery is approved
  - Which, if any, discovery is denied
  - When the discovery responses are due
  - To whom should the discovery responses be sent

## Step 4: Serving the Approved Discovery

- Once there is an order approving discovery, the discovery may be served on the other parties via Rule 501.4 (informal service)
  - Remember, this rule states in what manner everything except a citation may be served on other parties, by:
    - Hand
    - Mail
    - Fax
    - Email (if both parties agree)
    - Or another method approved by the Court
- There is no need to pay a Sheriff, Constable or process server to formally serve. A party may choose to do this, but it is not required of them.***

## Step 5: Party to Respond

- A party has no obligation to respond to discovery that has not been approved by written order of the Court
- If they do not respond, it cannot be held against them because the discovery was improper
- If they do respond, the Court may choose to strike the invalid discovery request and exclude the information from the case
- This should prevent embedded discovery as it no longer has any effect

## Step 6: Party Fails to Respond to Discovery

- If a party fails to respond to approved discovery, this should be brought to the Court's attention by a Motion to Compel and should be set for hearing

- A Motion to Compel may also be brought for failure to adequately respond or failure to respond completely

TRCP 215.1 (c)

- The Court may apply "sanctions, including dismissal of the case or an order to pay the other party's discovery expenses"

TRCP 500.9(a)

## Sanctions

- TRCP 215.2 contains some sanctions that a court may consider imposing for discovery violations, including:
- (1) no more discovery by the disobedient party;
- (2) an order charging all or some of the expenses of discovery, court costs or both against the disobedient party (or the attorney);
- (3) an order that the matters or any other designated facts that were the subject of the discovery order shall be taken to be favorable to the claim of the party obtaining the order;
- (4) contempt

## Sanctions

- Remember that Rule 215 is not binding on Justice Courts, you may use it when fairness dictates that you do so
- Use your discretion wisely when sanctioning parties
- Be especially cautious in using contempt

## Types of Discovery

- Request for Disclosure
- Request for Admissions
- Interrogatories
- Request for Production
- Depositions

## Request for Disclosure

- No objections allowed to Requests for Disclosure under Rule 194.5
- The procedure for RFD is designed to afford parties basic discovery without objection
- These specific requests are stated exactly in the Rules of Civil Procedure and are explicitly approved by the Supreme Court

## Request for Disclosure - TRCP 194.2

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
- (d) the amount and any method of calculating economic damages;
- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

## Request for Disclosure - TRCP 194.2

- (f) information on any testifying expert;
- (g) any indemnity and insuring agreements described in Rule 192.3(f);
- (h) any settlement agreements described in Rule 192.3(g);
- (i) any witness statements described in Rule 192.3(h);
- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

## Request for Disclosure - TRCP 194.2

- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;
- (l) the name, address, and telephone number of any person who may be designated as a responsible third party.

## Requests for Admission

- Narrow statements of fact which the other party must either admit or deny
- Mainly to eliminate issues where there is no disagreement
- TRCP 198.1

## Requests for Admission

- Party can either admit or deny the statement, or may make an objection to the RFA
- Must answer to each individually
- Failure to respond constitutes admitting the fact
- But remember, you must approve these first.
  - When should we approve or deny RFAs?

## Requests for Admission

- RFAs should be denied if:
- They are conclusions of law (Admit/Deny that your conduct was negligent)
- They are “sweepingly broad” (Admit/Deny that you have no legal defense to this case)
- They are confusingly worded (Admit/Deny that you cannot deny that you have not or will not have in the future breached a contract with ABC)

## Can Withdraw an Answer to an RFA

- The party shows **good cause** for the withdrawal or amendment; and
- The court finds that the parties relying upon the responses and deemed admissions **will not be unduly prejudiced** and that the presentation of the merits of the action will be subserved by permitting the party to amend or withdraw the admission.

- TRCP 198 Withdrawing Requests for Admissions

## Can Withdraw an Answer to an RFA

- We certainly agree that pro se litigants are not exempt from the rules of procedure ... But when a rule itself turns on an actor's state of mind (as these do here), application may require a different result when the actor is not a lawyer. Recognizing that [the Defendant] did not know what any lawyer would do does not create a separate rule, but recognizes the differences the rule itself contains.
- *Wheeler v. Green, 157 SW 3d 439 (Tex. 2005).*

## Interrogatories

- Written questions with an answer under oath
- Supposed to be used to narrow the issues
- Can respond by objecting to the interrogatory

## Interrogatories

- A party may serve on another party written interrogatories to inquire about any matter within the scope of discovery.
- An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses.
- But interrogatories may not be used to require the responding party to marshal all of its available proof or the proof the party intends to offer at trial

TRCP 197.1

## Improper Interrogatories

- In an order signed September 30, 1991, the trial court ordered State Farm to answer the interrogatories. We find that the trial court abused its discretion in entering the order in regard to interrogatories 14, 15, and 16-24, because these interrogatories are overbroad, burdensome, and harassing.

*State Farm Mut. Auto. Ins. Co. v. Engelke, Not Reported in S.W.2d, 1991 WL 273116, Tex.App.-Hous. (1 Dist.), 1991.*

## Improper Interrogatories

- Interrogatory No. 14:
- Identify fully every system, procedure, filing system, computer system, or computer program you maintain or have ever maintained for the reporting, recording, categorizing, compiling, or analyzing bodily injury claims, med-pay claims and/or personal injury protection claims or other claims or complaints regarding auto accidents, being sure to include in your answer all information included with the definition of the words IDENTIFY FULLY.

## Improper Interrogatories

- Interrogatory No. 15:
- With respect to each system in Interrogatory No. 14, maintained or used, describe in detail whether that system is computerized and discuss how the system operates.

## Improper Interrogatories

- Interrogatories 16 through 24:
- Sought the identity of the persons responsible for or most knowledgeable about the systems referred to in no. 14 and 15; the “in-house” identification of each system used; the types and formats of printouts provided by each system; the persons with custody, control or access to the printouts; the exact version and release of the software used; the exact configuration of the hardware, including memory size and graphics control board; the name, release and version of the operating system used on the hardware; any other software, hardware or information such as passwords or user-supplied files that is required to examine and use the information contained on the floppy diskette.

## Improper Interrogatories

- Court did not allow interrogatories that sought the number of people appellees sent to a doctor over several years, and the amount of money appellee paid to the doctor for services provided.
- The Doctor’s human resources manager testified he would have to review each of the doctor’s files, tens of thousands, to comply with the request, a task he said was “to the point of being impossible.”
- Court said this was overly burdensome

- *Morris v. Texas Employers Ins. Ass'n*, 759 S.W.2d 14 (Tex.App.—Corpus Christi, 1988).

## Requests for Production

- Party can make a request for production or for inspection, to inspect, sample, test, photograph and copy documents or tangible things within the scope of discovery
- The request must specify the items to be produced or inspected, either by individual item or by category, and describe with reasonable particularity each item and category.

TRCP 196.1 (a) & (b)

## Requests for Production

- Party “cannot be forced to prepare” or create a document not in existence or kept in their normal course of business”

*In re Colonial Pipeline Co., 968 SW2d 938 (Tex.1998)*

## Depositions

- Purpose is to get sworn testimony for use later
- Can be by a court reporter or by video or combination of the two
  - TRCP 199.1
- Would not be used regularly in Justice Court, but the Court may allow if it find it reasonable and necessary
  - When might that be?
    - Complicated timeframe or event
    - A witness is moving far away

## Depositions

- Notice
  - Should be served to the person being deposed and the other parties
  - The person being deposed should be identified in the notice
  - It can be a deposition of a party or a witness to the case
    - TRCP 199.2

## Depositions: Scheduling

- Should instruct the parties to agree to a place and time by a certain date
  - If they don't agree by that date, the court could set it
- Should order deposition to be taken during a timeframe the court specifies
  - Higher courts during the specific discovery period, but justice court has more control
- Should limit the time of the deposition in the order granting the deposition
  - This is automatic in higher courts

## Post-Trial Discovery

- Not required to be filed with the court.
- Must give at least 30 days to respond to discovery request.
- May file a written objection with the court within 30 days of receiving the request.
  - If an objection is filed, the judge must hold a hearing to determine if the request is valid.
    - If the objection is denied, the judge must order the party to respond to the request.
    - If the objection is upheld, the judge may reform the request or dismiss it entirely.

## Post-Trial Discovery

- These requests seem very personal because the case is now post judgment.
- Therefore, the focus in discovery is, “Do you have money and where is it so I can recover on my judgment?”
- Failure to respond can result in an order from the Court after a Motion to Compel.
- Failure to respond to that order can result in sanctions previously discussed, including contempt.

## Discovery in Criminal Cases

## Criminal Discovery

- Art. 39.14 of the CCP governs the procedure for discovery in criminal cases
- It DOES apply to justice courts, even though discovery is rare in our courts
- It was heavily modified by the 2014 “Michael Morton Act”

## Criminal Discovery

- If a defendant wants discovery, step 1 is for them to notify the state of their request.
- As soon as practicable, the state must make the information available to the defendant (defendant gets duplicates, not entitled to originals; pro se defendant only entitled to view, not entitled to have copies)
- Inspection of the records is done in the presence of a representative of the state

## Criminal Discovery

- The defendant is entitled to:
  - offense reports,
  - any designated documents,
  - papers,
  - written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers, or
  - any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action
- that are in the possession, custody, or control of the state or any person under contract with the state.

## Criminal Discovery

- The defendant is not entitled to:
  - the work product of counsel for the state in the case and their investigators and their notes or report
  - written communications between the state and an agent, representative, or employee of the state.

## Criminal Discovery

- If only part of an item or document is discoverable, the state shall turn over the part that is discoverable and inform the defendant that there has been a redaction.
- Defendant can then request a hearing on the redaction from the court.

## Criminal Discovery

- The state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.

## Criminal Discovery

- The state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.
- This applies even if discovered at trial.

## Criminal Discovery

- Before accepting a plea of guilty or nolo contendere, or before trial, each party shall acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the defendant under this article.
- Most of the time, this will not apply to your court, since no discovery occurred.

## Criminal Discovery

- You can charge the defendant discovery costs, pursuant to Government Code Ch. 552.261
  - No labor costs for <50 pages, unless the pages to be photocopied are located in:
    - (1) two or more separate buildings that are not physically connected with each other; or
    - (2) a remote storage facility.
  - Must be notified in advance in writing if >\$40