

Depositions, Interrogatories and Requests for Admission: Using Civil Discovery in TPR Cases

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Mandatory Discovery Conference

- Wisconsin Statute § 804.01 (2)(e):

No party may serve a request to produce or inspect under s. 804.09 seeking the discovery of electronically stored information, or respond to an interrogatory under s. 804.08 (3) by producing electronically stored information, until after the parties confer regarding all of the following, unless excused by the court ...



Six Things to Look for in Every Set of Written Discovery

1. Identification of witnesses
2. Identification of supporting documents
3. Identification of any alleged standards of conduct, standards of care



Ten Things to Look for in Every Set of Written Discovery

4. Identification of facts underlying key allegations in the pleadings
5. Identification of expert opinions and bases of expert witness testimony
6. Identification of people having responsibility for maintaining electronic information



Two Things to Avoid

1. Asking for descriptions of events
2. Asking for legal analysis or argument

Your opponent will only provide descriptions and analysis that are favorable to them



Outgoing Discovery

- Interrogatories
 - Wisconsin Statutes § 804.08
 - Limited in number by jurisdiction, including subparts
 - Do not overuse early on



Practice Tip

- Substitute Requests for Admission for interrogatories
 - They're free, they're unlimited, and they are disproportionately in your favor



Outgoing Discovery

What Do You Want to Learn and Why?

Witness Identification

- Example: Identify all persons who provided any information used or relied upon in forming the Petition in this case.



Outgoing Discovery

- Requiring witnesses to be identified lets you determine who to depose and who may be your trial witnesses
- Courts may refuse to allow witnesses testify who were not identified in a proper interrogatory



Witness Identification

* Ask about Hybrid Witnesses: The Social Worker

- Ask whether any fact witnesses may also provide opinion or expert testimony, and what that testimony will be. (e.g., the social worker).
- Ask whether any of these witnesses may rely upon information provided by other. (also the social worker)



Outgoing Discovery

- Requests for Production of Documents
 - Wisconsin Statute § 804.09
 - No limit on the number of requests



Outgoing Discovery

Types of Requests:

1. For types of documents:
 - Example -- all documents constituting the file maintained by you on Antoinette Fuller
 - Shortcoming -- does not cover documents of unknown types which might contain useful information



Outgoing Discovery

2. For documents related to a subject matter:
 - Example -- all documents which refer or relate to the allegations made in the Petition
 - Shortcoming -- hard to know if you have received every document which complies



Outgoing Discovery

3. Contention requests:

- Example -- all documents which support your contention that Ms. Fuller failed to assume parental responsibility.



Outgoing Discovery

A good set of document requests will include all 3 types of requests, plus the following catch-all:

- "Please produce each and every document related in any way to the Petition, whether the document may be used affirmatively, defensively, for impeachment, or for rebuttal."



Outgoing Discovery

- Electronically Stored Information
 - Request such information in its original electronic form.
 - For example, you do not want a printed copy of a spreadsheet, but the computer file from which the spreadsheet was printed.



Outgoing Discovery

That computer file contains:

- Text that may not show when printed
- Changes and edits
- Authors and editors
- Date the file was last modified



Outgoing Discovery

- You want e-mail & electronic communications
 - Most communication is never reduced to printed form
 - An opponent who prints out e-mails from electronic form is in some sense producing modifying evidence



Outgoing Discovery

Do not assume that your opponent will produce electronic information just because it is included in your definition of document. Specifically ask for electronic information in the language of individual document requests. And then follow up and ask again.



Outgoing Discovery

- Effective discovery often requires an initial deposition of a witness who has knowledge about the computer systems and files of a party.
- Consider this interrogatory: "State the name of each employee whose computer drives and electronic mailboxes were reviewed for production of documents in this matter."



Outgoing Discovery

- Requests to Admit
Wisconsin Statute § 804.11



Outgoing Discovery

- RFAs are underused but powerful
 - Facts or contentions admitted are "conclusively established," although a party can obtain relief from an admission by motion prior to trial
 - No limit on the number of requests



Outgoing Discovery

- Example:
- "Admit that each document you have produced in response to these requests for admissions is genuine and authentic."



Outgoing Discovery

- Deposition of an Entity (e.g., the plaintiff) and Other Considerations with Outgoing Discovery
 - Use written discovery tools in connection with a 30(b)(6) designated representative deposition



Outgoing Discovery

What Do You Want to Learn and Why?

- By taking the deposition of a designated representative you can gather basic factual information about how the party operates, what documents it regularly maintains, and how its computer network is organized, among other things



Personal Knowledge Requirement

- Someone with personal knowledge must sign the interrogatory responses. Wis. Stat. § 804.08(1)(b). That person should become a witness in the case, and therefore cannot be the plaintiff's attorney. The attorney, however, does not sign responses to the production of documents, but does sign for any objections made.



Final Points

- Discovery takes time, and patience because it proceeds in phases. Conduct it with your sights set on trial.
- Be honest always
- Correct any mistakes
- Verify and do not have any typographical errors in final, signed documents.