



Discovery

By  [Carlos Pedraza](#)

Discovery, in the law of the United States and other countries, is a pre-trial procedure in a lawsuit in which each party, through the law of civil procedure, can obtain evidence from the other party or parties by means of discovery devices such as a request for answers to interrogatories, request for production of documents, request for admissions and depositions.

Discovery can be obtained from parties not directly named in a suit using subpoenas. When a discovery request is objected to, the requesting party may seek the assistance of the court by filing a motion to compel discovery.

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Erin Ranahan

DISCOVERY UNDERWAY Axanar attorney [Erin Ranahan](#) told [Space.com](#) in a June 23, 2016, article: "We are continuing settlement talks, and the discovery process is well underway. ... We hope that the lawsuit will be resolved before the need to file any further motions with the court." By July 12, however, discovery had proceeded far enough for both sides to file for a



protective order governing confidential information to be gathered in discovery.

Civil Discovery in the United States

See also: [W Civil discovery under United States federal law](#) and [W Federal Rules of Civil Procedure](#)

Under the law of the United States, civil discovery is wide-ranging and can involve any material which is “reasonably calculated to lead to admissible evidence.” This is a much broader standard than relevance, because it contemplates the exploration of evidence which might be relevant, rather than evidence which is truly relevant. Disagreements about relevance are taken care of before trial in motions and during trial with objections.

Certain types of information are generally protected from discovery, including:

- Information that is privileged.
- Work product of the opposing party.
- Information shared between spouses.
- Juvenile criminal records.
- Peer review findings by hospitals in medical negligence cases.
- Other types of evidence for reasons of privacy, difficulty and/or expense in complying and for other reasons.



SUBPOENA ISSUED Axanar’s former chief technologist and current critic, **Terry McIntosh**, was [served with a subpoena](#) that went public on September 2, 2016. The subpoena points to other persons of interest to the plaintiffs, CBS and Paramount.



Impact of Discovery

In practice, most civil cases in the United States are settled after discovery.¹⁾ After discovery, both sides often are in agreement about the relative strength and weaknesses of each side’s case and this often results in either a settlement or summary judgment, which eliminates the expense and risks of a trial.

At the Federal Level

See also: [W Civil discovery under United States federal law](#)

Discovery in the United States is unique compared to other common law countries. In the United States, discovery is mostly performed by the litigating parties themselves, with relatively minimal judicial oversight. The Federal Rules of Civil Procedure guide discovery in the U.S. federal court system.

Scheduling Conference



LAWSUIT PRIMER Get an overview of the copyright lawsuit, including a timeline of the case, as well as downloadable pleadings made by the plaintiffs, CBS and Paramount, and defendants Alec Peters and Axanar Productions Inc. » [Lawsuit Primer](#)

See also: [Scheduling conference](#)

According to the Federal Rules of Civil Procedure, the plaintiff must initiate a [conference](#) between the parties after the complaint was served to the defendants, to plan for the discovery process.²⁾

Discovery Plan

See also: [Joint statement](#)

In the scheduling conference the parties attempt to agree on the proposed discovery schedule, and submit a proposed Discovery Plan to the court within 14 days after the conference. After that, the main discovery process begins which includes:

1. **Initial disclosures**, including:
 - People who may have discoverable information, their addresses and the subjects of information (including names of the opposite party).
 - Description by category and location of documents that the disclosing party may use to support its claims or defenses. The actual copies of the documents can be either attached with the initial disclosures, or more frequently provided later on the opposite party's request.
 - Computation of each category of damages claimed by the disclosing party.
 - Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment.
2. **Depositions**
3. **Interrogatories**, written questions to be answered under oath. "The answers can be used at trial in the same way as deposition answers - to challenge a party who changes his or her story later."³⁾
4. **Request for admissions**, in which parties are asked under oath to stipulate to the truth of specific facts or that particular documents are genuine. This helps save time and narrow the focus. This generally saves time by narrowing issues to be proved at trial.
5. **Request for production** of documents, asking for documents, electronically stored information, or other tangible items that pertain to the subject matter of the lawsuit. For example, a party in a court case may obtain copies of email messages sent by employees of the opposing party.

In most federal courts the formal requests for interrogatories, request for admissions and request for production are exchanged between the parties and not filed with the court. Parties, however, can file motions to compel discovery if responses are not received within the relevant time limits. Parties can file a motion for a protective order if the discovery requests become unduly burdensome or for

purpose of harassment.

Public Disclosure

See also: [Protective order](#)

According to the Federal Justice Center, evidence formally submitted to the court, either at trial or for consideration by the judge, is generally eligible for public disclosure, unless parties successfully seek a protective order.

Parties now undertake discovery away from the court. Experience has proved confidentiality protective orders to grease the wheels of discovery in many cases. Parties are often more willing to produce requested discovery when they know that such production does not necessarily make the information public.⁴⁾



Portions of this article were adapted from the article, [W Discovery \(law\)](#).

Keywords

[lawsuit](#), [plaintiffs](#), [defendants](#)

¹⁾

[U.S. Department of Justice: "Civil Rights Complaints in U.S. District Courts" \(PDF\)](#), retrieved 3/5/16.

²⁾

[Federal Rules for Civil Procedure, Rule 26](#).

³⁾

<http://www.nolo.com/legal-encyclopedia/formal-discovery-gathering-evidence-lawsuit-29764.html>, retrieved 3/5/16.

⁴⁾

[Federal Justice Center: Confidential Discovery — A Pocket Guide on Protective Orders](#), (2012), p.1.

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