

## **Key Concepts, Part I: Discovery Procedures in Divorce**

By Scott David Stewart

This article will cover a few important discovery tools used in practically every divorce. Although the rules of court vary from state to state, they share the same basic discovery procedures. In Arizona, the family court rules are found in the Arizona Rules of Family Law Procedure (ARFLP), which refers to the gathering of evidence as “disclosure and discovery.”

### ***What Are the Basic Steps in Divorce Litigation?***

Generally, the legal process for getting a divorce typically involves some version of the following litigation steps:

**Step #1: Petition.** The filing of a petition document formally initiates the divorce proceedings.

**Step #2: Summons and Response.** This is the formal notice to the other spouse (the opposing party) about the petitioner’s intent to pursue court action to obtain a legal divorce. The other party’s response is the acknowledgement that the divorce procedure has begun.

**Step #3: Motions.** This is a formal request to the court to order some type of action before the trial. In situations involving domestic abuse, for example, it is not uncommon for a motion for a protective or restraining order to be filed.

**Step #4: Discovery.** *This phase of the litigation allows each side to gather information and evidence in support of their legal arguments. The tools of discovery include interrogatories, depositions, requests for production, requests for admission, and more.*

**Step #5: Hearings and Temporary Orders.** In some instances there are questions or situations that need to be temporarily resolved before the final divorce agreement is reached or ordered by the court. Temporary orders usually remain in effect until a final decision at the end of the divorce.

**Step #6: Trial.** This is a critical court appearance before the judge where the case will be decided. The trial may include testimony from witnesses, lay and expert, as well as the submission of other forms of evidence, such as financial records.

**Step #7: Judgment.** The final decision is a judgment. The judgment is a legal statement of the judge’s rulings on all the issues in question during the trial -- child custody, visitation, child support, spousal maintenance, property division, and so on.

### ***What is Discovery?***

Discovery procedures involve discovering evidence in the case, whatever the case may be. During the discovery process, *the parties determine what evidence is needed to support their respective claims on the issues.* Both parties will identify their witnesses and exchange documents and the like for evidentiary purposes. The tools of discovery are used to acquire information from both parties and from third parties.

### ***Are there Limits on Discovery?***

Discovery not only enhances the likelihood of successful negotiations in the divorce, it is preparation for trial. There are limitations to discovery, however, and those limitations include:

- 1) *No Privileged Information* -- A party can't ask for privileged information from the other party.
- 2) *No Excessive Requests* -- A party can't inundate the opposing party with discovery requests.
- 3) *No Embarrassment or Harassment* -- A party can't use discovery to embarrass or harass the other party.
- 4) *No Irrelevancy* -- A party can't ask for information that isn't truly relevant to the case.

Continued in **Key Concepts, Part II: Discovery Procedures in Divorce.**

#### AUTHOR PROFILE:

**Scott David Stewart** is an attorney practicing family law in greater Phoenix, Arizona. He is AV Rated by Martindale Hubbell, has a perfect AVVO Score of 10.0/superb, and is a member of the State Bar of Arizona, American Bar Association–Family Law Section, and Maricopa County Bar Association–Family Law Section. Prior to forming the [Law Offices of Scott David Stewart](#), he worked as Deputy County Attorney for the Maricopa County Attorney's Office where he honed his trial skills and developed strategies for success that he continues to use and implement in his law firm today. His experience as prosecutor opened his eyes to the need for passionate legal representation for children during divorce proceedings. Children's voices and needs are often relegated behind the desires of their parents. *Stewart's number one goal is to ensure that children are the focal point of any dispute between parents.*