

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

By Scott David Stewart

In **Part I** of this series on key discovery concepts, we presented the basic steps involved in most divorce cases. We also described some of the disclosures required by the Arizona Rules of Family Law Procedure (ARFLP). In this article, we'll introduce a few more discovery tools. Namely interrogatories, depositions, requests for production, and requests for admission.

### **Tool of Discovery: Interrogatories**

Simply stated, *interrogatories* are written questions served on the other party. There are uniform and non-uniform interrogatories. Uniform interrogatories are in court-approved form, for general use in any case. Questions specific to a particular case, outside the scope of the standard form, are non-uniform interrogatories. *The parties send one another these written questions to be answered.* An interrogatory may be objected to, for example when the question is asking for undiscoverable privileged information.

### ***Why Do We Use Interrogatories?***

Interrogatories help the parties focus on factual information and help establish the validity of documents. These questions are tailored to ask for very specific, factual information to avoid overly vague or incomplete answers. Interrogatories help collect each party's statistics, financial details, employment history and income, criminal arrest or conviction details, and the like. *Besides the primary function of finding out information, the answers to the interrogatories can be read in court as admissions by the answering party.*

Each party must answer the questions in writing truthfully under oath. As a very useful discovery tool, interrogatories are used along with depositions, discussed below. The primary difference being that, unlike depositions, only parties in the case answer interrogatories.

### **Tool of Discovery: Depositions**

In a *deposition*, the witness is required to appear at a specified location for the purpose of providing information regarding some matter in the litigation. Unlike the interrogatory, the deposition may also be used for third parties. It is possible to compel the witness to bring along documents or other items to the deposition. *The deposition may be introduced at trial to impeach that witness with any inconsistent statements that he or she made.*

### ***What Happens When the Opposing Party is Deposed?***

*Oath.* At the deposition, the opposing party appears with counsel, is placed under oath, and is asked questions by the attorney for the party seeking the testimony. Although depositions are usually oral, they may sometimes be written. They may even be video recorded.

*Objections.* The deposed party's attorney can't coach the witness, but may properly object to any questions that are posed to the witness.

*Court Reporter.* A record of the deposition must be made for evidentiary purposes. Usually, a court reporter is there to record the questions asked, the answers given, and any objections

made. An official deposition transcript is then prepared. The deposed party witness has an opportunity to review the transcript and make corrections.

### **Tool of Discovery: Request for Production**

The *request for production* of documents and things, and entry upon land for inspection and other purposes, is a very powerful discovery tool. Essentially, requests can be made for anything in the possession or control of a party upon whom the request is made. A request for production allows one party to request that the opposing party produce tangible evidence for the purpose of inspection and copying, and much more.

*The request for production may permit the requesting party to enter the property to inspect the premises.* Again, the party receiving the request may file an appropriate objection. For example, objecting because the documents requested are not relevant to the family law case.

### **Tool of Discovery: Request for Admission**

The *request for admission* of facts is also served on the opposing party in the divorce case. The request for admission sets forth statements that the receiving party must admit, deny, or object to. The party responding to the request for admission has to make reasonable inquiries into the information that is known to, or readily obtainable by, him or her. When the receiving party does not respond to a request for admission -- that is, offers no admission, no denial, and no objection -- then the statement is deemed admitted. *Whenever a statement is admitted to, it may be used as evidence in the trial.*

### ***How Are Discovery Requests Enforced?***

The *subpoena* orders a person to appear, testify, produce and permit inspection, copying, testing, sampling, and so on, of tangible things in the possession, custody, or control of that person. The subpoena may order the person to permit inspection of the premises, at a specified time and place.

A party and the party's attorney may be sanctioned by the court for failing to comply or respond to a discovery request. They may be held in contempt for failure to obey orders and sanctioned at the court's discretion for engaging in conduct that was abusive, groundless, obstructionist, or unreasonable. *Any refusal to comply with a discovery request can have serious consequences.*

### **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.*