**I. Introduction and Definitions**

1. Discovery is the name for a process used in civil lawsuits to collect information related to the case. In discovery, each party can ask for information from the other party(ies) related to the claims and defenses in the lawsuit.
2. “Discoverable” is a term that describes any information you can get through the discovery process.
3. Requests for Production are a discovery tool you can use to ask for documents and other records from the other party(ies).

**II. REQUESTS FOR PRODUCTION**

1. **Federal Rule of Civil Procedure 34** is the formal mechanism for requesting documents and other records. The below provides a general explanation of Rule 34, but you should review Rule 34 carefully.
2. **Using Rule 34 to Request Information**
3. **What Can I Request Using Rule 34?**
4. ***Records***

Rule 34, subsection (a), explains what you can ask for using Requests for Production. The most common items requested are copies of records, including:

* Documents
* Electronically stored information
* Writings
* Drawings
* Graphs
* Charts
* Photos
* Sound recordings
* Images
* Data compilations

You can use Requests for Production to obtain almost any kind of record that is relevant to your case. Common items requested include:

* Legal documents like contracts, deeds, or insurance policies
* Transcripts, files, or decisions of an administrative agency
* Internal policies, rules, manuals, processes, handbooks, etc.
* Video or audio recordings
* Photos
* Phone records
* Letters, emails, text messages, social media posts, or other written or electronic communications
* Reports, memos, incident reports, or notes
* Diary entries, calendars, schedules, agendas, and meeting minutes

Less common things you can ask for under Rule 34 include:

1. ***To inspect, test, or sample other “tangible things.”***

For example, if you are claiming you were hurt by a defective object (e.g., you fell off a ladder when it gave out), you could ask to inspect the object.

1. ***To inspect, measure, survey, photograph, test, or sample land or property.***

For example, if you are claiming that you were hurt by something dangerous in a certain place (e.g., you slipped on icy stairs) you could ask to inspect the location.

1. **How Many Documents or Other Things Can I Ask For?**

Usually (but not always), the Judge will enter a case management or scheduling order near the start of your case. This order *may* (but does not always) limit the number of Requests you can make under Rule 34. (Twenty-five (25) is a common limit.) **Check the orders in your case to see if the Judge has limited the number of requests you can make.**

A Request does not necessarily mean a single document. As Rule 34(b)(1)(A) says, you can ask for a specific item OR *categories* of items. For example, if your lawsuit involves a dispute over medical care, you could ask for “all medical records in your possession, custody, or control.”

If you request a category of information, a single Request for Production could net one document or 100+ documents. (Or it could net zero documents if none exist.)

What if I need to ask for more information? It is unlikely that you will need all the Requests allowed by the Judge, but if you have a legitimate reason for needing more, you can ask the Judge to permit additional Requests.

1. **When Will I Get the Information?**

Under Rule 34, the other party has thirty (30) days to produce the information you asked for. They can also ask the Judge for more time, if needed.

1. **Guidelines and Good Practices for Requests for Production**
2. Consider what evidence you need to prove your case. Make a list, if that is helpful to you.

For example, if you were suing for unlawful use of force, helpful documents might include:

* video or audio of you being hurt
* photos of your injuries
* medical records of your injuries
* officer notes or reports about the incident
* records showing that the officer(s) involved had used excessive force in other cases
* testimony or documents from any disciplinary hearings related to the incident

1. Think about what *categories* of information would capture what you need. Some categories to consider could include:

* Medical records
* Personnel files and disciplinary reports
* Emails and other communications
* Phone records
* Photos
* Videos
* Audio recordings
* Internal memos or notes
* Police reports
* Administrative hearing records
* Policies, procedures, or manuals

1. Consider who has the information you need.

* You can only issue Requests for Production to parties to the case. (There are other discovery tools if you need information from someone who is not a party.)
* In the example used above (unlawful use of force case), the defendant might have your medical records if you were injured and treated in prison.
* But, if you were injured by police and treated by a hospital or doctor’s office, the defendant probably would not have those records
* If you are suing a business or government, think about who within the organization will have the information you need—are there certain employees or categories of employees that would have useful information?
* In the unlawful force example, emails sent or received by the officer who hurt you might be relevant to your case, but *all* emails sent by the entire police department or prison would not be.

1. Consider the timeframe relevant to your case.

* In the unlawful force example, you would probably need only your medical records from the day you were injured through the present.

1. **Limits –**
2. **Federal Rule of Civil Procedure 26(b)(1)** explains what information is discoverable):

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

This rule can be broken down into a few broad guidelines:

1. ***“[R]elevant to any party’s claim or defense”***

* You can request information related to any claim you are making, any claim that is being made against you, and any defenses you or the other party(ies) are making.
* For example, if you are making an excessive force claim, you could ask for information on use of force policies, use of force training, other use of force complaints, and reports written on the incident where you were hurt.
* On the other hand, you probably could not ask for information on how much money the defendant(s) makes or what employee benefits he or she gets. That information is not relevant to whether your rights were violated.

1. ***“[P]roportional to the needs of the case”***

* Discovery cannot be used as a “fishing expedition” to look for any evidence of any kind of wrongdoing. You have to think about what you need to prove your case and what information you need to do that. Then, target your requests to get what you need.

1. ***“[N]eed not be admissible in evidence to be discoverable”***

* You may have heard the term “hearsay,” even if you do not know what it means. Hearsay is a technical term for certain information that cannot be used as evidence at trial. What matters for discovery purposes is that you can still ask for information even if it is inadmissible at trial. If another party tries to avoid producing documents because they claim the information is hearsay or not admissible, that is not a valid reason for withholding it.

1. ***“[N]onprivileged matter”***

There are certain kinds of information that are not available in discovery at all:

i. Attorney-Client Communications:You cannot get copies of any communications between the other parties and their attorney(s).

This rule only protects *communications*, not *facts*. That means you cannot ask what the defendant told his attorney about this case. But you can ask the defendant what (s)he knows about this case.

For example: If you think a defendant knew about an illegal practice and did nothing to stop it, you can ask the defendant to produce all documents and communications related to the practice (which could show when the defendant first learned about it). You cannot ask the defendant for communications with their lawyer about the practice.

Attorney-client privilege only protects information that has been kept confidential between the lawyer and client. So, if the defendant forwarded an email from his/her attorney to a friend, that email would no longer be privileged.

ii. Attorney Work Product:You cannot get copies of an attorney’s notes or drafts related to a case.

So, you can ask for copies of a *party’s* notes related to the illegal practice or related to the case. You cannot ask for the lawyer’s notes related to the illegal practice.

If either party asks for documents that are privileged, they can withhold those documents, but they have to provide a “privilege log” that explains what they withheld and why. A privilege log must contain a list describing the documents withheld without revealing their contents and identify the privilege claimed. An example might look this:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Document Description | Author | Recipient | Date | Privilege Claimed |
| 1 | Email | Defendant’s attorney | Defendant | 1/2/2020 | Attorney-client |
| 2 | Memo | Defendant’s attorney #1 | Defendant’s attorney #2 | 5/20/2020 | Work-product |
| 3. | Notes | Defendant’s attorney #2 | N/A | 5/30/2020 | Work-product |

The purpose of the privilege log is to help determine if a privilege claim is valid. If it is not a valid privilege claim, the party asking for the information can ask the Court for an order directing the other party to disclose it.

As a self-represented party, you probably will not have much (if any) privileged information. But if you talked to a lawyer at the *pro se* clinic or consulted with an attorney about representing you, your communications with those lawyers are privileged (even though they do not represent you in the case). A privilege log for those communications might look something like this:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Document Description | Author | Recipient | Date | Privilege Claimed |
| 1 | Consultation letter | Potential lawyer | Plaintiff | 12/15/2019 | Attorney-client |
| 2 | Email | Pro se clinic volunteer | Plaintiff | 1/25/2020 | Attorney-client |
| 3 | Draft discovery requests | Pro se clinic volunteer | Plaintiff | 2/20/2020 | Attorney-client / Work product |

1. ***“Unless otherwise limited by court order”***

The Judge always has discretion to allow or limit discovery based on the needs of the case.

1. **Federal Rule of Civil Procedure 26(c)** also has rules for information that is not “privileged” but still gets some protection
2. ***Confidential***

Common types of confidential information include medical records and sensitive business information. This information is not *necessarily* protected from discovery, but it might be, depending on the circumstances. If it is discoverable, the Judge may order that the parties take special care to protect it.

1. ***Protective Order***

i. If a party tries to avoid producing information because it is confidential (or if you are asked to produce confidential information) they are not allowed to withhold the information without asking the Judge for permission first.

They (or you) can ask for that by filing a motion for protective order. Each party will get a chance to explain their position and why they think the information is or is not confidential. Then, the Judge will decide whether the information should be disclosed and if it should be specially protected.

ii. You can also ask the Judge for a protective order if you think the other party is asking for information that is irrelevant.

For example, there are circumstances where your medical history or records are relevant. Usually, this would be if you are suing the defendant for a physical injury. But if you are not suing for an injury, the other party usually does not have a right or need to know about your medical information.

Another example would be financial information. If you are claiming you lost wages because the defendant unlawfully discriminated against you, your pay information might be relevant to the case. But if you are suing for unlawful use of force and are not seeking damages for lost pay due to your injuries, then your pay information would not be relevant.