



# **A Guide to Discovery for Unrepresented Parties for Cases Placed on the Public Hearing Docket**

## **What is Discovery?**

Discovery is a process by which the parties gather and exchange important information about the case. The purpose of discovery is to provide the parties with the opportunity to gather evidence relevant to proving or defending the case. Examples of evidence include but are not limited to witness testimony, documents, memos, notes, and video or audio recording.

## **How Does Discovery Work?**

There are four main types of discovery requests: 1) Depositions 2) Interrogatories, 3) Requests for admissions and 4) Requests for production of documents.

1. Depositions are formal witness interviews. Every deposition must be transcribed (recorded word-for-word) by a certified court reporter, who will produce a verbatim transcript of the deposition soon after it takes place. The party requesting the deposition is responsible for hiring a court reporter and paying the court reporter costs.
2. Interrogatories are open-ended written questions that solicit information about a case. For example, 'What is the agency's formal explanation for terminating the complainant?'
3. Requests for admissions are closed-ended written statements that typically call for a 'yes/admit' or 'no/deny' response. For example, 'Admit that the agency filled the vacancy created by the complainant's termination.'
4. Requests for the production of documents give the parties an opportunity to obtain memos, notes, email messages, policies and procedures, and other written or electronic records related to the case that are in the possession of the other party.

## **When Does Discovery Take Place?**

Generally, the Hearing Examiner determines the beginning and end dates of discovery, as well as the deadlines for submitting and responding to discovery requests.

## **Am I Required to Participate in Discovery?**



## Pennsylvania Human Relations Commission

Neither party is required to submit discovery requests to the other party. However, if a party wishes to submit discovery requests, they must do so by the established deadline unless the Hearing Examiner allows for an extension.

### **Can the Hearing Examiner Order a Party to Produce Evidence?**

Parties are required to make a good faith effort to resolve their discovery disputes before bringing them to the attention of the Hearing Examiner. Any party unable to obtain evidence through the other party may file a motion with the Office of the Hearing Examiner requesting that the Hearing Examiner order the other party to produce the evidence.

### **Can Parties Object to Particular Discovery Requests?**

Yes. Parties may object to one or more of the other party's discovery requests, but they must have a legitimate reason for doing so. Legitimate reasons for objecting to discovery requests include but are not limited to: 1) the request seeks information that is not relevant to the case; 2) the information requested is privileged (meaning restricted); and 3) the information requested would be too costly, time-consuming, or difficult to produce. The opposing party must notify the requesting party of their objections and the specific reasons for each.

### **What if the Parties Disagree About Discovery Obligations or Objections?**

Parties are required to make a good faith effort to resolve their discovery disputes before bringing them to the attention of the Hearing Examiner. Such efforts can be accomplished by telephone, video chat, email or in person. If the parties are unable to resolve their dispute even after making a good faith effort, the party seeking information through the disputed discovery request may file a motion with the Hearing Examiner. The motion must contain a written statement that the requesting party has made a good faith effort to resolve the discovery dispute with the opposing party; failure to include the statement may result in a denial of the Motion.

After considering the Motion and any response/reply, the Hearing Examiner will decide whether the opposing party should be excused from responding to the discovery request(s). If the Hearing Examiner decides that the opposing party must respond to one or more disputed discovery requests, they will order the party to do so.

### **Can Parties Challenge the Hearing Examiner's Discovery Order(s)?**



In some circumstances. This issue is governed by the Pennsylvania Rules of Appellate Procedure (42 Pa. C.S. 702) and any party wishing to challenge a discovery order must comply with the aforementioned rule.

**What Happens to the Information Obtained During Discovery?**

Information obtained during discovery can be used to prove or defend a case. More specifically, it can be used to support or respond to a motion, and it can be offered into the record in the form of an exhibit during a hearing. When discovery material is attached to a motion response/reply, or accepted as a hearing exhibit, it becomes part of the broader hearing record that will form the basis for the Hearing Examiner's recommendation in the case.