

DATED this ____ day of ____ 20__.

 John Jones
 Attorney for Defendant
 Bar Number
 Address

CERTIFICATE OF MAILING

I hereby certify that on this ____ day of ____ 20__, I placed a true and correct copy of the foregoing REQUEST FOR ADMISSIONS in the U.S. mail, postage prepaid, addressed to counsel on the attached list:

 An employee of [Law Firm Name]
 Your Name, Paralegal

§ 6.8(C) REQUEST FOR PRODUCTION

Requests for Production and Inspection (most often simply referred to as Request for Production) usually involve documents, but they may also be used to inspect and take photographs of such things as cars, houses, and boats. As we will discuss later, it is imperative that the paralegal be able to distinguish between discoverable and non-discoverable material. The good news is that there are only two kinds of documents that are not discoverable. The bad news is that they are not always easy to identify.

Discoverable Materials

Any materials relevant to the litigation requested by the opposing party that do not violate the Fifth Amendment rights of the responding party or any other privilege or rule are discoverable.

Non-Discoverable Materials

Material which is part of Attorney Work Product, and information that is covered by a privilege, are not subject to disclosure to the opposing party, such as when a question or request could result in the responding party incriminating him or herself in a criminal act. (But that does not mean you can't ask!) Examples of non-discoverable material may include:

Attorney Work Product

Materials developed in anticipation of litigation by or for the attorney are not generally discoverable. For instance, a report produced by order of the client to update the attorney on the client's financial stability may be considered work product.

Privileged Information

Privileged information, such as records from a doctor or hospital and private communication with a spouse or with a spiritual advisor, would not be discoverable, unless the privilege has been waived. The most common way to waive a privilege is for the information to be made “non-private” by the fault of the person who owns the privilege.

Attorney-Client Privilege

Private communications between the client and his or her attorney are considered privileged communications and are not discoverable. This also applies to communications with paralegals and other staff working for the attorney on behalf of clients. However, the communication must include the following elements to remain privileged:

- a. *The communication must be private*
- b. *The communication must remain private*
- c. *The communication must fall within the scope of the paralegal’s duties.*

In addition to the attorney-client privilege, there are other privileges that affect the discoverability of certain documents. They include communications between a doctor and a patient, between a member of the clergy and a penitent, and other recognized and relevant privileges.

A paralegal is often called upon either to prepare materials for inspection by the opposing party or to inspect the materials other parties have provided. When *preparing* materials, follow these rules:

1. Withhold any documents involving communication between the client and the attorney. (This includes other staff and/or paralegals.)
2. Withhold any documents prepared to assist the attorney in arguing the case. However, be aware that any document, even if privileged or work product, will become discoverable if the attorney decides to introduce that document as evidence.

Numerous documents, photographs, reports, and other materials may be obtained through discovery. Requests for production are the mechanism by which such materials are obtained. This mechanism does not require leave of court or a subpoena. Examples of materials to consider when creating requests for production include:

- ✓ *photographs*
- ✓ *designs or drawings*
- ✓ *contracts*
- ✓ *corporate records*
- ✓ *income tax records*
- ✓ *company reports*

Some attorneys use a *subpoena duces tecum* in much the same manner as requests for production. A *subpoena duces tecum* demands the appearance of an individual at a specific time and place and demands that he or she bring specific documents with him or her. A *subpoena duces tecum* is typically used to obtain information from a *witness* who is not a party to the action. (Remember. Discovery is usually between parties.) There are, however, no rules that prohibit the *subpoena duces tecum* from being issued upon an opposing party. At worst, the party may choose to challenge the validity of the information being sought.

DISCOVERY POINT

View discovery requests as the beginning of the investigation, not the end. With that in mind, ask yourself what information the responses provide and whether they open any new doors for investigation.

RESPONDING TO REQUESTS FOR PRODUCTION

As with other discovery documents, when requests for production are received, they should be “date-stamped” with the response date noted in the appropriate calendars and tickler systems.

DISCOVERY POINT

If you find yourself thinking twice about whether to produce a document, ask the attorney. Once produced, information cannot generally be taken back even if it was produced by accident.

Paralegals are sometimes asked to help prepare documents in response to requests for production, or to review documents provided by another party in response to requests. These tasks are not often mentioned among the most important duties of a paralegal. Make no mistake: preparing and reviewing such documents is one of the most critical tasks in which a paralegal will engage.

The paralegal may need to communicate with the client to obtain specifically requested materials. When the paralegal receives these documents from the client, he or she should make sure the documents are complete and that they accurately respond to the requests.

Privileged documents, or documents which are considered work product, should be removed from the materials before they are presented to the other side. The requesting party, however, must be alerted that the withheld documents exist but will not be produced. A short statement establishing the grounds upon which the refusal to produce is based should be provided within the response, such as, “Request for Production No. 5 shall not be produced by defendant. This material constitutes attorney work product and is therefore not disclosed herein.”

By way of example, let us assume you are a paralegal preparing responses to a set of Requests for Production. When you reach Request No. 21, it reads:

21. Produce any and all documents that evaluate compliance by the defendant with the terms of the January 14, 2021 contract which is in dispute in this litigation.

The paralegal reviewing the documents provided by the client discovers that one of the documents is a letter from the client to the attorney. This document would not be considered discoverable, but the existence of the letter must be disclosed to the opposing party. It should be noted that some attorneys feel that simply disclosing the fact that some privileged material is being withheld is sufficient notice. Other attorneys consider it more appropriate to be specific, and in fact, some court rules require this.

The following represents one way to respond:

1. The defendant hereby responds to plaintiff's request for production and encloses all relevant documents and information requested, with the following exceptions:
2. The following documents are privileged by means of the attorney-client privilege and, therefore, are not discoverable:
 - a. August 3, 2021 letter from defendant Carl James to his attorney Judith Faye re: July 16, 2020 contract.

The requesting party may argue that, since the letter precedes litigation, it is not privileged. This would normally be a weak argument. If the document is deemed critical enough, the requesting party can file a motion to compel discovery; the court, after reviewing the document privately, will determine whether it is privileged. A similar response would be provided for work product documents as well:

3. The following documents are privileged by means of the attorney-client privilege, and therefore are not discoverable:
 - a. Notes from August 11, 2020 meeting with paralegal

Finally, keep an accurate and exact copy of the documents provided to the requesting party so that months from now when the trial is about to begin, the attorney will have no doubts about what has been disclosed to the opposing side.

DISCOVERY POINTS

- When inspecting large quantities of produced material, take short, frequent breaks to maintain an alert mind.
- Use one discovery document to verify or corroborate other discovery documents.
- Compare responses to discovery for discrepancies with the complaint, answer, or other pleadings.

Considerations regarding work product and privileged documents require even more attention when vast amounts of materials are involved. Allowing even one out of thousands of documents to fall negligently into the hands of the opposing party could constitute malpractice.

A paralegal must review each document with the attitude that this might be the document that wins the case. If large quantities of materials must be reviewed, it is not uncommon for the paralegal to be sent to the opposing firm or even to the opposing party's place of business, to go through boxes or files and choose what to copy.

Of course, the opposing party has most likely already sanitized these boxes and files. Two principles should guide you:

1. *Be thorough to the point of obsession.*
2. *When in doubt, copy.*

Never allow the opposing party or attorney to intimidate or hurry you while you are inspecting the documents. Ask for a private, or at least a semi-private, area to do your work. If you need more time, politely inform the other party and make arrangements to return. Do not sacrifice accuracy and thoroughness to time constraints imposed by the opposing party.

Finally, if you have to think twice about whether a document should be copied, copy it. It is better to obtain too much information than too little.

EXAMPLE | REQUEST FOR PRODUCTION

**DISTRICT COURT OF CLARK COUNTY
STATE OF CONFUSION**

JOHN and SALLY SMITH

Plaintiff,

vs.

JACK DOE

Defendant.

REQUEST FOR PRODUCTION

YOU are requested to produce the documents requested herein and serve your responses upon PLAINTIFF within thirty days of receipt of these requests, pursuant to court rules.

REQUESTS

1. Produce tax returns for the past three (3) years.
2. Produce any documents or other physical item you plan to enter as evidence at trial.
3. Produce curriculum vitae for any expert witnesses you plan to call to testify at trial.

DATED this ____ day of ____ 20__.

Attorney for Defendant

CERTIFICATE OF MAILING

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John Carroll, Paralegal