

SPEEDY AND COST-EFFICIENT DISCOVERY PRACTICES FOR THOSE LOW-ASSET DIVORCE CASES

By Adam T. Barney

Most clients in low-asset divorce cases will have a finite amount of funds from which to complete their divorce. Many attorneys who represent low-asset clients will tend to limit their representation to the “bare essentials” in order to help their client reach the end of the case. This means that discovery is often not conducted along the way. The fallacy in this line of thinking is that the discovery process is always a costly and time-consuming endeavor and not every client can afford it. This is simply not true and by following these steps, you can start to provide all of your divorce clients with timely and cost-efficient discovery.

Step 1 – Good templates will save you time and save your client’s money

The first step you should take is to revise your existing new client questionnaires. A good divorce questionnaire will not only give you the basic information about your client and the opposing party, it will also be your roadmap to the discovery process.

Whenever I revise my intake questionnaire, I always start with a review of my “best” discovery requests. I want to make sure that I am including questions that cover everything that I would typically look for in discovery. If you are new to the area of divorce and you are unsure of what assets, debts, or other issues are relevant; you should review the Uniform Ohio Domestic Relations Forms that the Supreme Court of Ohio recently introduced.

Once you have a good questionnaire in place, it’s time to create your template discovery requests. Review your new client questionnaire and then draft your template. You will want to make sure that your new discovery requests cover all of the assets and debts that you have included in your questionnaire.

Step 2 – Send out your discovery when you first file a case

As you are preparing your initial documents to be filed, you should have already reviewed the information your client provided on the questionnaire. You will likely find that your client has highlighted certain assets or debts or has pointed out other items you should investigate through discovery. Revise your template discovery documents so that they are more case-specific.

There’s little reason to wait to send out discovery. I find it’s a good practice for my initial discovery requests to be served alongside the Complaint or the Answer. I want to get these discovery requests out early because the first hearing will usually address temporary orders. At the temporary orders hearing, you will be advocating for child or spousal support, responsibility for debt payments, etc., and you will want to be equipped with evidence that backs up your claims. In order to be properly prepared for this hearing, you need to get your discovery out ASAP.

Step 3 – Get your subpoenas out the door early

In most cases, you need to subpoena the opposing party’s employer for records so that you are able to verify his or her earning ability and other benefits. In order to streamline this process, you should create a template for your future subpoenas. Most counties will have their own subpoena forms that you will need to use, but you can prepare your own template attachments. Once you have a good template in place, you can quickly prepare your subpoenas and have them filed and served. As I mentioned earlier, the temporary orders hearing will be coming up early in the case, so you need to get your subpoenas out quickly if you want to be able to

present employment records to the court.

Step 4 – Have your client help you review the documents

As you receive discovery, don’t be afraid to ask your client to help you review it. Your client will be more familiar with the information and may find points of interest you missed. If you received electronic discovery, it’s easy to email the documents directly to your client. I find that most clients are happy to help review the discovery and give you their notes on it.

Step 5 - Enforcing discovery in an efficient manner

We all know that just because you ask for discovery does not mean you will get any documents. To this end, you must have a speedy and efficient enforcement process in place. You should maintain a spreadsheet that tracks the various due dates of your requests. You need to review the spreadsheet on a weekly basis. As soon as you notice that discovery is overdue in a case, you can send a warning shot letter that indicates discovery is overdue and if the party does not produce discovery in the next 7 – 10 days, you will file a motion to compel with the court and seek an award of reasonable attorney’s fees.

If you don’t get a discovery response after your warning shot letter, go ahead and file a motion to compel and set it for the next pre-trial or status conference. No need to worry about it any further as you’ll be able to address the matter with the court at the next hearing. This enforcement method does not require a lot of time or effort on behalf of the attorney and it will help ensure that your client’s money was not wasted in the effort to get discovery from the other side.



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