

Rule 12.280. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by 1 or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter on land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision (d), the frequency of use of these methods is not limited, except as provided in rules 12.200, 12.340, and 12.370.

(b) Redaction of Personal Information. All filings of discovery information must comply with Florida Rule of Judicial Administration 2.425. The court has the authority to impose sanctions for violation of this rule.

(c) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Indemnity Agreements. A party may obtain discovery of the existence and contents of any agreement under which any person may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or to reimburse a party for payments made to satisfy the judgment.

(3) Electronically Stored Information. A party may obtain discovery of electronically stored information in accordance with these rules.

(4) Trial Preparation: Materials. Subject to the provisions of subdivision (c)(5), a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (c)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative, including that party's attorney, consultant, or agent, only on a

showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. On request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred as a result of making the motion. For purposes of this subdivision, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (c)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(A) (i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 12.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

a. The scope of employment in the pending case and the compensation for such service.

b. The expert's general litigation experience, including the percentage of work performed for petitioners and respondents.

c. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.

d. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert must not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. On motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions under subdivision (c)(5)(C) concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 12.360(b) or on a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, the court must require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (c)(5)(A) and (c)(5)(B); and concerning discovery from an expert obtained under subdivision (c)(5)(A) the court may require, and concerning discovery obtained under subdivision (c)(5)(B) must require, the party seeking discovery to pay the other party a fair part of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) As used in these rules an expert shall be an expert witness as defined in rule 12.390.

(6) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(d) Protective Orders. On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that the discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Limitations on Discovery of Electronically Stored Information.

(1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to compel discovery or for a protective order, the person from whom the discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking discovery.

(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that

(A) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less

expensive; or

(B) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(f) Sequence and Timing of Discovery. Except as provided in subdivision (c)(5) or unless the court upon motion for the convenience of parties and witnesses and in the interest of justice orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not delay any other party's discovery.

(g) Supplementing of Responses. A party is under a duty to amend a prior response or disclosure if the party:

(1) obtains information or otherwise determines that the prior response or disclosure was incorrect when made; or

(2) obtains information or otherwise determines that the prior response or disclosure, although correct when made, is no longer materially true or complete.

(h) Time for Serving Supplemental Responses. Any supplemental response served under this rule must be served as soon as possible after discovery of the incorrect information or change, but in no case may the supplemental response be served later than 24 hours before any applicable hearing absent a showing of good cause.

(i) Confidentiality of Records. A determination as to the confidentiality of a court record must be made in accordance with Florida Rule of Judicial Administration 2.420. Records found to be confidential under Florida Rule of Judicial Administration 2.420 must be sealed on request of a party.

(j) Court Filing of Documents and Discovery. Information obtained during discovery must not be filed with the court until such time as it is filed for good cause. The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order.