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In Section III, we discussed gathering basic financial information and data. After you have done so, you and your attorney should then proceed with formal Discovery.

Discovery is a variety of processes which are designed to accomplish exactly what the word implies: to discover additional information or factual data. The scope of discovery is very broad. Simply stated, the rule is that you can ask for anything which is relevant "or may lead to relevant information."

There are various types of discovery. Some of the most common are:

A. Interrogatories - Interrogatories are written questions which you submit to your spouse which must be answered in writing and under oath. There is a tendency to ask broad, all encompassing questions, in order to avoid the risk that something may be overlooked. However, many times such an approach to discovery is ineffective and unproductive. On the contrary, carefully phrased, very specific questions are more likely to produce specific responses which will be helpful to you and your attorney.

B. Notice to Produce Documents - Notice to Produce Documents requires your spouse to produce any documents which are relevant to the case and which are either in their possession or subject to their control such as employment records, bank or brokerage accounts which are in their name or pension and IRA account statements.

C. Oral Depositions - In some states, this proceeding is called an Examination Before Trial. That is exactly what it is. It is your attorney's opportunity to examine or to take testimony from your spouse or any other witness before trial. They are placed under oath so that all of their answers are "sworn testimony." The proceeding is in the presence of a Court Reporter who records the questions and answers verbatim. The questions and answers of your spouse are evidential and can be submitted directly into evidence at the time of trial. For other witnesses, they can be very valuable tools to confront and contradict conflicting statements made at the time of trial.

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Very often clients are concerned that their spouse will not respond to interrogatories or notices to produce and/or will stall, delay or refuse to appear for an oral deposition. Those are understandable, but not reasonable concerns. The Court will enforce reasonable discovery requests, and will be very impatient with a party who has frustrated or unreasonably delayed discovery. The Court may:

- A. Limit or bar a person's trial testimony if they have not cooperated with discovery;
- B. Assess counsel fees against the offending party; or
- C. In some instances, impose monetary sanctions and penalties against the offending party.

Remember, on the other hand, that Discovery is a "two-way street." While you have every right to require your spouse to participate in Discovery, you, correspondingly, have the obligation to respond to reasonable requests from your spouse.

If properly conducted, Discovery will provide both parties with an information base to allow them to negotiate fairly and enter into a Settlement Agreement.



*Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.*

*Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.*