



DISCLOSURE V. DISCOVERY

Information – facts – are needed to resolve most disputes – no matter what process is being used to reach a solution. When people talk about “disclosure”, “discovery,” “informal discovery”, and “formal discovery”, they are referring to the information-gathering phase of a legal claim.

In marital dissolutions, Minnesota case law establishes a duty on each party to make a full and fair disclosure of his/her income, assets and debts, Doering v. Doering, 629 N.W.2d 124, 131 (Minn. App. 2001); review denied (September 11, 2001). Some case law says this disclosure needs to be made even if the other side did not request the information formally or informally. See e.g. Doering.

Other law refers to the obligation of a party to exercise due diligence and make the request. See e.g. Minn. Stat. §518.145, Subd. 2(2).

Court rules define and govern discovery. See Minn. R. Civ. Prac. Rules 26-37. They set time limits for the responses, provide for ways to object to discovery, and list sanctions for failure to respond or failure to respond appropriately. They also provide ways to compel information from persons other than a party.

Some of the forms of discovery require the responding party to certify that it has made a search for the information and the responses are full and complete to the best of the responding party’s knowledge. Some of them require the

responders to swear under oath that the responses are true and accurate.

The general scheme of the discovery rules is to compel response and provide assurances of reliable information. Discovery pursuant to the Court rules (sometimes called formal discovery) also results in written records of what was requested and the response in case, at some time later, there is a question as to whether all of the information was produced – or whether the information was correct. If not, the resolution of the dispute might be challenged in subsequent court proceedings for fraud or other claims of misbehavior by the responding party. Minn. Stat. §518.145, Subd. 2.

All of the discovery rules apply to family law cases.

Parties also have the option of “informal discovery”, which means that they request and exchange information without following the time limits of the rules and without all of the formalities of request or responses prepared in the format prescribed in the rules or with oaths, etc. Sometimes there is a written record of the requests and responses by lists in correspondence.





The assumption of informal discovery is that information needed from third parties can be obtained cooperatively, sometimes with a release of information from one of the parties.

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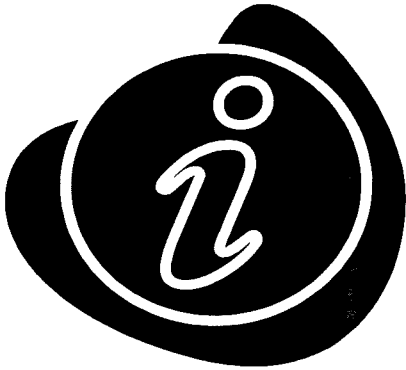
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Checklist For The Upcoming Two Months

-  Check your school district’s website for the 2004-2005 school calendar or call the district office for it.
-  Obtain information about school orientation and supplies lists. Coordinate with the other parent what each of you will do to help prepare your children for the beginning of school.
-  Meet to discuss holidays and school breaks for the upcoming school year.
-  Make sure the school office and the children’s teachers have your contact information and know you want to receive information about your children.

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Sometimes, once all information is exchanged, the parties may prepare a verified statement of their financial circumstances which usually means that they have exchanged documents verifying the information on the statements and swear under oath that the lists are complete and accurate to the best of their knowledge.

Finally, parties have the option of volunteering (disclosing) the necessary information without any requests from the other side. Disclosure collapses the length of the information – gathering phase of a case. It can provide a written record of what was produced by a list in correspondence. The disclosing party can offer a verified statement of his/her financial circumstances.

Factors in selecting an information-gathering method include:

- What does the requesting party already know or what records can the requesting party access without relying on the other party?

- How much does the requesting party realistically have at stake?
- Is there trust between the parties? Do they cooperate with each other?
- Is a broad base of information needed (for example, 3 years of bank records, 3 years of tax returns)? Or is a specific piece of information needed?
- Who should control the nature of the information produced (for example, the full appraisal as opposed to the summary page giving the appraised value)?
- How important is timeliness? How important are third party rules to structure or compel the exchange of information?
- Do you need information from sources other than the opposing party? Will those sources be cooperative with you:?
- How important is clarity in the record of requests and responses?
- What are the costs of the information requests/responses in terms of attorney fees and out-of-pocket expenses?

These factors can be analyzed not only to make a choice from formal or informal discovery and voluntary disclosure but also in selecting the types of formal discovery that fits your situation. There is no “one size fits all” way of gathering information in a legal matter.

Do good. Avoid evil.

Ralph Ross

MIXED MEDIA REVIEW

Books



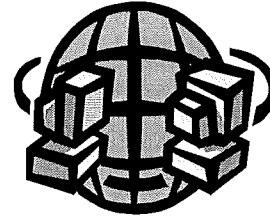
Good communication skills underpin most successful cooperative efforts. Some people are born with a knack for communication. However, most of us learn these skills over time, and this learning continues into adulthood and old age.

Three books reflecting studies done by the Harvard Negotiating Project are excellent, learner-friendly resources on communications. Each discusses communications from a slightly different perspective.

Getting to Yes: Negotiating Agreement Without Giving In by Fisher, Ury and Patton discusses basic approaches of assertiveness and effectiveness. Difficult Communications: How to Discuss What Matters Most by Stone, Patton, and Heen, focuses on the internal conversations that each participant in a discussion experiences and strategies to respond effectively to those internal conversations. And finally Getting Past No: Negotiating Your Way From Confrontation to Cooperation by Ury, addresses strategies for responding to confrontation and encouraging effective, cooperative communications.

Key concepts running throughout all three books are a focus on thoughtful and deliberate speech (self-control), and awareness of the response of others to one's own speech (effectiveness versus venting).

Reading these books once is sure to enhance anyone's communication skills. Coming back to them over time as resources will only add depth to those skills.



Internet

There is mounting evidence that video violence detrimentally affects teenage behavior. Frequency in watching video violence is linked to less frontal lobe brain activity, and thus less impulse control and less decision-making activity. See "Not Child's Play", by Jay Stuller, The American Legion, June 2004.

Two internet sites review video games and give guidance to parents in selecting appropriate, non-violent video games for their children. One is www.lionlamb.org ; another is www.sosparents.org (sponsored by the Center for Successful Parenting).

The information at these, and other similar websites, put parents in the position of not only self-help but also "Society-help" to prevent violence. In the words of Mr. Stuller: "The Choice - not to purchase or watch a violent product - or not to allow a minor child to buy and watch it - is the most powerful measure of protection. It is the marketplace, above all, that will most effectively choke off the flow of media violence by making it unprofitable."

SUMMER EVENTS

A Way to Share Your Values

Summer is a great time to treat yourself and your family to entertainment that is value-laden. Choose free "real life" activities - a concert in the park, a trip to the library, watching a local soccer game. Choose ones that focus on inner peace: a solitary walk in the rain, a cup of coffee on the porch, gardening or fishing in the early morning. Focus on relationships: a family checkers tournament, reading a book aloud to your kids for a half hour each evening, a family picnic. Or exercise: walking to the neighborhood store for the Sunday newspaper, roller-blading, biking, swimming ...

Celebrate the season!

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Ripples...

the drop of one stone...

a single event transforming the lake...



Each family law matter creates ripples in the lives of the people involved in the case and in our society. This publisher believes that individuals can choose to toss the stone in a way that promotes ripples of cooperation, connection and positive values for the benefit of themselves, and the smaller and greater communities in which they live. "Family Law Ripples" is dedicated to providing practical and legal information to that end.