

Personal Injury Actions – Examinations for Discovery

Examinations for discovery usually mark the mid-point of most lawsuits. By this time all of the documents have been exchanged and examined and the lawyers will have all had an opportunity to point out to the other side all of the strengths of their case and the weaknesses of the other side's. The doctor's notes will have been exchanged and examined.

At the discoveries, the defendant is usually examined first by the plaintiff's lawyer and then the plaintiff is examined by the defendant's lawyer. The examinations are always conducted before a court reporter and the party being examined is sworn under oath. The questions and answers (the evidence) are recorded in the form of a transcript.

The discoveries are not held in a courtroom and there is no judge present. Sometimes discoveries are held in the lawyer's offices or at the court reporter's offices. Usually it is just the parties and their lawyers present (along with the court reporter, of course).

The purpose of the discoveries is partly to find out what the other side's case is, partly to nail down the other side to one specific version of the facts and partly to see what kind of witnesses the parties are going to make if it goes to trial. Mostly, though, the purpose is to try to get the other side to make admissions against their interest.

For example, an answer like "yeah, the light was really red when I went through but I was so drunk I didn't care" only happens in the dreams of plaintiff's lawyers but that is the kind of evidence one hopes to elicit.

If you are the one giving evidence it is a good idea to remember that only your opponent can make use of your testimony at discovery. Your evidence is useless to your lawyer because if he wants evidence from you, he will call you to the stand at the trial.

It is around the time of examinations for discovery that most lawsuits tend to settle. The reason for settling beforehand is because the lawyers have to spend a fair amount of time

preparing for the discoveries and even more time conducting them and most insurance companies who see that they are likely going to lose take this opportunity to cut their losses.

Many times actions are settled after discoveries as the discoveries allow the defendant to test the plaintiff's persuasiveness as a witness in addition to allowing them to probe the strength of the plaintiff's case. Often, they realize that they are likely to lose and will try to minimize their losses by settling.

However, if the action doesn't settle, the next stop is often the court house.