

Rule 8. General Provisions Regarding Discovery

(a) Discovery methods for civil protection order proceedings. For good cause shown and with due regard for the summary nature of the proceedings, the Court may authorize a party to proceed with discovery from the other party by requests for written interrogatories or production of documents. Prior to any such authorization, a party shall submit to the Court each proposed interrogatory or request for production in writing. Upon leave of the Court, a party may obtain discovery from a non-party pursuant to Superior Court Rules of Civil Procedure. Requests for publicly available Metropolitan Police Department reports may be made directly to the Department. The frequency and use of these methods is limited pursuant to subsections (1), (2), and (3) herein. Every application for discovery shall state whether there is a criminal proceeding pending involving the facts alleged in the petition.

(1) Scope of discovery in civil protection order proceedings. Unless otherwise directed by the Court, the scope of discovery is limited to matters directly relating to the incident or incidents of abuse alleged in the petition or answer, to medical treatment obtained as a result of those incidents, and to any prayers for relief.

(2) Sequence and timing of discovery. Discovery may be initiated in any sequence, provided that any discovery methods used shall be initiated within five (5) calendar days of service of the petition on the respondent in civil protection order proceedings. Time for discovery shall not be enlarged if it would delay the scheduled hearing on the petition, provided that the respondent has been served with the petition at least seven (7) days prior to the hearing.

(3) Protective order. No methods of discovery shall be used or enforced which would require direct contact between the parties if either party objects. Upon motion by a party or witness, the Court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that discovery be denied; (b) that discovery be granted only on specified terms and conditions; (c) that certain matters not be inquired into or that the scope of discovery be limited to certain matters.

(4) Responses to discovery. Responses to requests for discovery shall be served on the other party and filed with the Clerk's Office not later than the close of business on the second day prior to the hearing.

(5) Alternative discovery methods. Requests for discovery by methods pursuant to section (a) above, other than written interrogatories or requests for production of documents, shall be made by written motion with notice that any opposition shall be filed in writing no later than five (5) days after service of the motion. The motion may be decided without a hearing.

(6) Alternative means for service of discovery requests. When a respondent is ordered not to have contact, direct or indirect, with a petitioner or witness, requests for service of discovery demands or subpoenas shall be made to the Court for service by the Metropolitan Police Department or by such manner as the Court may direct.

(b) Discovery methods for criminal contempt proceeding arising out of violation of a temporary protection order or civil protection order. All discovery requests made in privately prosecuted criminal contempt actions shall be presented to the Court for approval. In publicly prosecuted criminal contempt actions, counsel are expected to engage in prompt informal discovery as set forth below:

(1) Statements of accused. Upon the timely request of an accused, the prosecutor shall disclose to the accused and make available for inspection, copying or photographing any relevant written or recorded statements made by the accused, that portion of any written recording containing the substance of any relevant oral statement made by the accused, within the custody or control of the prosecutor, and the substance of any other relevant oral statement made by the accused if the prosecutor intends to use the statement at trial.

(2) Prior record. Upon the timely request of an accused, the prosecutor shall furnish to the accused such copy of the accused's criminal record which the prosecutor intends to use for any purpose in the criminal contempt proceedings.

(3) Documents and tangible objects. Upon the timely request of the accused, the prosecutor shall permit the accused to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecutor, and which are material to the preparation of the defense, or are intended for use by the prosecutor as evidence in chief at the contempt proceeding, or which were obtained from or belong to the accused.

(4) Reports of examinations and tests. Upon the request of the accused, the prosecutor shall permit the accused to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecutor, and which are material to the preparation of the defense or are intended for use by the prosecutor as evidence in chief at the contempt proceeding.

(5) Expert witnesses. Upon the request of the accused, the prosecutor shall disclose to the accused a written summary of expert testimony the prosecutor intends to use during its case in chief at the contempt proceedings. This summary shall describe the opinions of the witnesses, the bases and the reasons therefor, and the witnesses' qualifications.

(6) Defense disclosure of evidence. If the accused requests disclosure under subsections (b)(2), (3), or (4) of this rule, upon compliance with such requests, upon request by the prosecutor, the accused shall permit the prosecutor to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are in the possession, custody or control of the accused and which the accused intends to introduce as evidence in chief at the contempt proceedings; and to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, made in connection with the particular case and within the possession, custody or control of the accused, which the accused intends to introduce as evidence in chief at the contempt proceeding or which were prepared by a witness whom the accused intends to call at the proceeding when the results or reports relate to the witness's testimony.

(7) Defense disclosure of expert witnesses. If the accused requests disclosure under subsection (b)(5) of this rule and the prosecutor complies, the accused, at the request of the prosecutor, shall disclose to the prosecutor a written summary of expert testimony the accused intends to use at trial. This summary shall describe the opinions of the witnesses, the bases and reasons therefor, and the witnesses' qualifications.

(8) Information not subject to disclosure. Except as provided in subsections (b)(1), (2), (3), (4), (5), (6) and (7), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution or defense documents made in connection with the investigation, prosecution or defense of the case. Except as to scientific or medical reports, section (b) of this Rule does not authorize discovery of statements producible under *18 U.S.C. § 3500* or SCR-Criminal 26.2, which authorities may be relied upon in the discretion of the judicial officer.

(9) Continuing duty to disclose. If, prior to or during the contempt proceeding, a party discovers additional evidence or material which was previously requested by the other party or ordered to be disclosed, and which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the Court of the existence of the additional evidence or material.

(10) Protective orders. Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such protective or modifying order as is appropriate.

(11) Discovery sanctions. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to permit the discovery or inspection, grant a continuance, prohibit the party from introducing evidence not disclosed, or may enter such other orders as it deems just under the circumstances.

COMMENT

This rule provides respondents charged with criminal contempt in the Unit the same access to discovery as is guaranteed criminal defendants under the Superior Court Rules of Criminal Procedure. There is a preference for publicly prosecuted criminal contempt charges. In such prosecutions the respondent is entitled to the discovery set forth in this rule upon request of the prosecutor as in any other criminal case. In situations when a public prosecutor is not available and the Court appoints a private prosecutor, the Court shall approve discovery requests. This procedure is only meant to guard against a respondent's discovery requests overburdening a private prosecutor. This concern is greater when the petitioner is pro se and is prosecuting the contempt charge.