

CHAPTER 26

DISCOVERY

TABLE OF CONTENTS

26.01 Disclosure by Petitioner Without Court Order	26-2
A. Documents and Tangible Items.....	26-2
B. Witnesses.....	26-2
C. Expert Witnesses	26-3
26.02 Disclosure by other parties without Court Order	26-3
A. Documents and Tangible Objects.....	26-3
B. Witnesses.....	26-3
C. Expert Witnesses	26-3
26.03 Information Not Discoverable	26-3
26.04 Discovery Upon Court Order	26-3
A. Physical and Mental Examinations.....	26-4
B. Depositions.....	26-4
C. Reports or Examinations and Tests	26-5
D. Experts.....	26-5
26.05 Time, Place, and Manner of Discovery	26-6
26.06 Regulation of Discovery	26-6
A. Continuing Duty to Disclose.....	26-6
B. Protective Orders	26-6
C. Timely Discovery.....	26-6
D. Sanctions	26-6
E. Failure to Act.....	26-7

	PROCEDURE	AUTHORITY
26.01	<p>DISCLOSURE BY PETITIONER WITHOUT COURT ORDER Upon the request of any party, the petitioner shall make the following disclosures without a court order:</p> <p>A. DOCUMENTS AND TANGIBLE ITEMS. The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner’s possession or control that relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items that relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements that relate to the case. The copying of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minn. Stat. § 611A.90.¹ The petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minn. Stat. § 626.556, subd. 11.²</p> <p>B. WITNESSES. The petitioner shall disclose to all other parties and the county attorney the name, address and telephone number of each person intended to be called as a witness at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witness’ written or recorded statement(s) that relate to the case within the petitioner’s knowledge.</p>	<p>RJPP 17.01, subd. 1(a)</p> <p>RJPP 17.01, subd. 1(b)</p>

¹ Minn. Stat. § 611A.90 provides the following regarding release of videotapes of child abuse victims:

Subd. 2. Court order required.

(a) A custodian of a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse may not release a copy of the videotape without a court order, notwithstanding that the subject has consented to the release of the videotape or that the release is authorized under law.

(b) The court order may govern the purposes for which the videotape may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interests of the child.

Subd. 3. Petition. An individual subject of data, as defined in Minn. Stat. § 13.02, or a patient, as defined in Minn. Stat. § 144.335, who is seeking a copy of a videotape governed by this section may petition the district court in the county where the alleged abuse took place or where the custodian of the videotape resides for an order releasing a copy of the videotape under subdivision 2. Nothing in this section establishes a right to obtain access to a videotape by any other person nor limits a right of a person to obtain access if access is otherwise authorized by law or pursuant to discovery in a court proceeding. Minn. Stat. § 611A.90, subs. 2 and 3.

² With respect to disclosure of the name of or any identifying information regarding a reporter of maltreatment, Minn. Stat. § 626.556, subd. 11(a), provides as follows:

“ An individual subject of a record shall have access to the record in accordance with [Minn. Stat. § 13.04, subd. 2], except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure. *Minn. Stat. § 626.556, subd. 11(a).*”

	PROCEDURE	AUTHORITY
	<p>26.01 Disclosure by Petitioner Without Court Order (continued)</p> <p>C. EXPERT WITNESSES. Petitioner shall disclose to all other parties and the county attorney:</p> <ol style="list-style-type: none"> 1. The name, address, and telephone number of each person intended to be called as an expert witness at trial; 2. The subject matter about which each expert witness is expected to testify; and 3. A summary of the grounds for each opinion to be offered. 	RJPP 17.01, subd. 1(c)
26.02	<p>DISCLOSURE BY OTHER PARTIES WITHOUT COURT ORDER</p> <p>Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:</p> <p>A. DOCUMENTS AND TANGIBLE OBJECTS. The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object that the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.</p> <p>B. WITNESSES. Each party shall disclose to every other party and the county attorney the name, address, and telephone number of each person the party intends to call as a witness at trial. Each party shall permit every other party and the county attorney to inspect and copy such witness' written or recorded statements within the party's knowledge as relates to the case.</p> <p>C. EXPERT WITNESSES. Each party shall disclose to all other parties and the county attorney:</p> <ol style="list-style-type: none"> 1. The name, address, and telephone number of each person intended to be called as an expert witness at trial; 2. The subject matter about which each expert witness is expected to testify; and 3. A summary of the grounds for each opinion to be offered. 	<p>RJPP 17.02(a)</p> <p>RJPP 17.02(b)</p> <p>RJPP 17.02(c)</p>
26.03	<p>INFORMATION NOT DISCOVERABLE</p> <p>The following information shall not be discoverable by any party or the county attorney with or without a court order:</p> <ol style="list-style-type: none"> 1. Documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and 2. Except as otherwise required by RJPP 17, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party. 	RJPP 17.03
26.04	<p>DISCOVERY UPON COURT ORDER</p> <p>Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:</p>	RJPP 17.04(a)(1)

	PROCEDURE	AUTHORITY
	<p>25.04 Discovery Upon Court Order (continued)</p> <p>A. PHYSICAL AND MENTAL EXAMINATIONS.</p> <ol style="list-style-type: none"> 1. Examination by Licensed Professional. If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination. 2. Copy of Report. The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court. <p>B. DEPOSITIONS.</p> <ol style="list-style-type: none"> 1. Agreement of Parties. A deposition may be taken upon agreement of the parties. 2. Order of Court. Following the initial appearance, any party or the county attorney may file with the court a motion for an order requiring the testimony of any other person or party to be taken by deposition upon oral examination, if: <ol style="list-style-type: none"> (a) There is a reasonable probability that the witness will be unable to be present or to testify at the hearing or trial because of the witness' existing physical or mental illness, infirmity, or death; (b) The party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means: or (c) Upon a showing that the information sought cannot be obtained by other means. 3. Subpoena. Attendance of witnesses at oral deposition may be compelled by subpoena as provided by RJPP 13. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to RJPP 17.04, subd. 2(b), and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party. 4. Notice. A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A written transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at 	<p>RJPP 17.04(a)(2)</p> <p>RJPP 17.04(b)(1)</p> <p>RJPP 17.04(b)(2)</p> <p>RJPP 17.04(b)(3)</p> <p>RJPP 17.04(b)(4)</p>

	PROCEDURE	AUTHORITY
	<p>25.04 Discovery Upon Court Order – (continued)</p> <p>trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minn. Stat. § 626.556, subd. 8³, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.</p> <p>C. REPORTS OR EXAMINATIONS AND TESTS. Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments, treatment records, scientific tests, experiments, and comparisons relating to the particular case. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Privileged communications are discoverable in accordance with Minn. Stat. § 626.556, subd. 8.⁴</p> <p>D. EXPERTS. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to RJPP 17 and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:</p> <ol style="list-style-type: none"> 1. Upon motion, the court may order further discovery by means other than as provided in RJPP 17.01 and RJPP 17.02, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate. 2. 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 upon 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. 3. Unless manifest injustice would result, <ol style="list-style-type: none"> (a) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and (b) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to 	<p>RJPP 17.04(c)</p> <p>RJPP 17.04(d)</p> <p>RJPP 17.04(d)(1)</p> <p>RJPP 17.04(d)(2)</p> <p>RJPP 17.04(d)(3)</p>

³ Minn. Stat. § 626.556, subd. 8, provides that “no evidence relating to the neglect or abuse of a child or to any prior incidents of abuse or neglect involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or abuse on the grounds of privilege set forth in Minn. Stat. § 595.02, subd. 1(a), (d) and (g).” Minn. Stat. § 595.02, subd. 1(a), (d), and (g), deal with communication between husband and wife, and between medical or therapeutic professional and patient. While such communications might otherwise be privileged, they shall not be excluded during child protection proceedings. *Minn. Stat. § 626.556, subd. 8.*

⁴ *Id.*

	PROCEDURE	AUTHORITY
	pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.	
26.05	<p>TIME, PLACE, AND MANNER OF DISCOVERY An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted, and may prescribe such terms and conditions as are just.</p> <p><i>COMMENT: Due to the expedited permanency timelines, judges, parties, and attorneys must be aware of the relatively short time period for completion of discovery.</i></p>	RJPP 17.05
26.06	<p>REGULATION OF DISCOVERY</p> <p>A. CONTINUING DUTY TO DISCLOSE. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identify of the witnesses.</p> <p>B. PROTECTIVE ORDERS. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.</p> <p>C. TIMELY DISCOVERY. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within fourteen (14) days of a request for disclosure.</p> <p><i>Comment: Due to the expedited permanency timelines, judges, parties, and attorneys must be aware of the relatively short time period for completion of discovery.</i></p> <p>D. SANCTIONS. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:</p> <ol style="list-style-type: none"> 1. An order that the matters regarding which the order was made, or the other designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order; 2. An order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting the disobedient party from introducing designated matters in evidence; 3. An order striking the petition or parts of the petition, striking the answer or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved; 	<p>RJPP 17.06, subd. 1</p> <p>RJPP 17.06, subd. 2</p> <p>RJPP 17.06, subd. 3</p> <p>RJPP 17.06, subd. 4</p> <p>RJPP 17.06, subd. 4(a)</p> <p>RJPP 17.06, subd. 4(b)</p> <p>RJPP 17.06, subd. 4(c)</p>

	PROCEDURE	AUTHORITY
	<p>25.06 Regulation of Discovery (continued)</p> <p>4. In lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any court order; or</p> <p>5. The court shall require the party or attorney, or both, who failed to act to pay the reasonable expenses, including reasonable attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.</p> <p>E. FAILURE TO ACT. Failure to act as described in RJPP 17.04 may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order.</p>	<p>RJPP 17.06, subd. 4(d)</p> <p>RJPP 17.06, subd. 4(e)</p> <p>RJPP 17.04, subd. 5</p>