Written Discovery in Prisoner Civil Lawsuits

Prepared by **Uptown People's Law Center (updated April 2026)**

This document contains general information, not legal advice specific to your situation. This guide is an overview of the basics of discovery. See page 8 for resources to learn more.

What is Discovery?

Discovery is the time in a lawsuit when both sides exchange evidence and information. You will need to tell the defendants your side of what happened and give them documents. You can also hear the defendants' version of what happened, including the evidence they plan to use.

Discovery in federal cases is covered by the **Federal Rules of Civil Procedure** in **Rules 26-37**. Read these rules carefully before you begin.

Discovery starts after the defendants file their initial documents in the case (usually an answer to your complaint). The judge will order you to propose a schedule for discovery, including deadlines for document exchange, depositions, and expert reports. The timeline is usually about 6 months long, but you may want to request more time given that you are in prison and the mail process can be slow.

Discovery can be very broad, and you have a right to **any evidence that is *relevant*** to your case (if it is not covered by a legal privilege). Relevant means the evidence *relates to* your claims or the defenses of the people you are suing.

However, discovery is not unlimited. Judges compare the usefulness of evidence for your case with the burden of producing it. For example, if you ask for every policy IDOC has had in the past 100 years, a judge may reject your request because the policies are not closely related to your case, and it would cost a lot to print out and send you all those documents. On the other hand, asking for the policies that were in effect during the period of your case is a very reasonable request.

Several parts of discovery are taken under oath, under the penalty of perjury. This means the writer/speaker swears to tell the truth. If they lie, they can be criminally prosecuted for perjury. Interrogatories and depositions are both taken under oath.

Essential Tips

As the plaintiff, it is your responsibility to keep discovery moving. Start thinking about what evidence you need as soon as possible. There is typically no specific order in which discovery happens, so it is important for you to stay organized.

If you have not already, file a motion with the court to appoint an attorney to your case. You do not have the right to an attorney in a civil case, but you can ask for one.

Discovery can be very expensive. Court reporters for depositions often cost hundreds of dollars. If you win, you can get reimbursed, but you have to pay upfront.

Read the **Federal Rules of Civil Procedure** closely. Also read the **local rules** of the court you are in and the **standing orders** of the judge. You can write to the court clerk of your court to order a copy of these rules, or ask a loved one to print and send them to you (they are available online on the court's website).

If you need to get to the law library for an incoming court deadline, send the law librarian a copy of the court order, and they may be able to get you in quicker.

Keep a record of the date every time you send or receive documents from the other side. Many discovery materials are due within 30 days. Make sure you respond to document requests as soon as possible, so you avoid missing these deadlines. If you miss them, your case could be dismissed. If you have a delay in getting the materials, explain that delay in writing to the court and the other side.

Types of Discovery

1) Requests for production: paper and electronic documents, video and audio recordings, and physical inspections of facility spaces.

2) Interrogatories: answering questions under oath in a written document.

3) Depositions: answering questions under oath, with testimony written down word-for-word by a court reporter. Usually in person or over video.

Basics of Conducting Discovery

Send discovery requests to the attorney representing the prison officials (in Illinois, this is usually an Assistant Attorney General), NOT to the court. They must respond within 30 days unless you agree to an extension of time.

You have an ongoing duty to supplement discovery. If you find new documents that would have responded to a request, even after discovery ends, you must give them to the other side. You may also want to explain why you did not provide them earlier.

You must respond to all discovery requests, unless the information is covered by a legal privilege. The main privilege you should know is the 5th Amendment privilege against self-incrimination: you do not need to answer questions if you would have to admit to committing a crime for which you could face criminal charges. HOWEVER, there is a chance that if you do not answer all the questions that are relevant to your case, the judge might dismiss your case—so be careful.

Below are some common objections to discovery requests. To challenge objections that you get from the other side, write a letter to the defendants' attorney explaining why you believe the objection does not apply and why.

Common Objections	How to Address Them
Relevance	Explain why you want the requested information and how it relates to your case.
Privilege	Do legal research to understand the privilege and show that it does not apply in this situation.
Undue burden, or a vague or overbroad request	Explain why you need the information, and why you think the request is not too burdensome, vague, or overbroad. You may also want to think of ways to make your request more specific, so it covers only the documents you really need.

If you cannot come to an agreement with the defendants' lawyers, you may want to file a motion to compel production of documents with the court. Before you do so, you must try to meet with the other side (this is difficult in prison, obviously, so at least write to them requesting a conversation over the phone). See page 7.

1. Requests for Production

Most plaintiffs start by sending the defendants' attorneys a list of **requests for production** of documents. In your request, describe what documents you want clearly and specifically. Common requests include administrative directives, prison rules and manuals, staff meeting minutes, medical records, your master file, and incident or disciplinary reports filed by prison staff. Be specific about which policies you want to see, including the subjects and time frame.

<u>Electronically stored information ("ESI")</u>

If you want copies of IDOC staff emails, you may need to file an electronically stored information or "ESI" protocol. Ask for a draft protocol from defendants' attorney.

To create an ESI protocol, you will need to come up with a (1) list of search terms, and (2) a list of custodians. Search terms are words or phrases that IDOC will search for in custodians' emails. Custodians are the people whose emails will be searched. IDOC typically takes a very long time to do email searches, so make sure you do this as early as possible.

For custodians, you will want to add the people you are suing and anyone you believe was involved in decisions or discussions about your issue (for example, the grievance officer who signed your grievance denial). Be prepared to explain to the defendants' attorney why you are requesting each custodian.

Think strategically about the date range of documents and emails that you request. If the date range is too broad, the defendants might object. If it is too narrow, you may miss relevant information that could help your case.

Responding to Defendants' Requests for Production

When responding to the defendants' requests for documents, you will need to provide copies of all the documents you have that fit their requests. Also provide copies of every document you plan to use in your case. This part is very important**: If you do not give over documents before the discovery deadline, you may not be able to use them** at trial or summary judgment.

If you have documents that would respond to a discovery request, but you cannot access them (such as CorrLink messages), write that down in your responses. You could try writing a letter to the attorney for the defendants describing the issue and asking them to give you access to your property. If that does not work, you could file a motion to compel with the court to order IDOC to give you access.

2. <u>Interrogatories</u>

Interrogatories are another very important part of discovery – these are written questions that the defendants respond to in writing. You can ask up to 25 interrogatories for each individual defendant. Note that you cannot serve interrogatories on people you did not sue (you would need a subpoena for that instead). Interrogatories must be answered under oath. However, defendants usually

work with their attorneys to draft careful answers to interrogatories, so this is usually not a place to get a "gotcha" answer.

Interrogatories are helpful if you need specific information such as the identity of certain witnesses. They can also help you understand what the defendants' arguments are. A common interrogatory sounds something like this: "List all facts or evidence relied upon to support your claim that…"

Answering Defendants' Interrogatories

When answering interrogatories, answer truthfully and completely. Your answers are given under oath, which means you could be charged with perjury if you lie (and your case may be weaker if you are not viewed as credible). More importantly, if you do not include all the facts, you may not be able to raise them at a trial.

Keep a copy of your responses so you can update them as you get new information. Like all types of discovery, you have an ongoing duty to update the interrogatory responses if you learn new information or realize that you made a mistake.

3. Depositions

The purpose of a deposition is to ask questions to someone under oath. It happens outside of the courtroom, but it is a court proceeding. There is a court reporter present who writes down every word that is said. The goal of depositions is to investigate a case and to lock in bad admissions. If the person you are deposing changes their story at a trial, you can go back and read from the deposition testimony to show that they are not telling the truth or are not trustworthy.

It is really hard to conduct a deposition from inside prison. You may need a court order for the prison to allow you to conduct a deposition, but judges do not often grant those orders. You will also have to pay for a court reporter to transcribe the deposition, which can cost between $500-1000. If you do take a deposition, consider doing a bit of research beforehand so you feel prepared to respond to objections.

It may be much easier for you to get answers to your questions through interrogatories. You may also consider conducting a deposition through written questions.

The Federal Rules of Civil Procedure list requirements for written depositions in Rule 31. For this type of deposition, you should do the following:

1. File a motion with the court asking permission to do a deposition by written questions. If needed, ask the court to designate an officer to take the deposition if you do not have a court reporter.
2. Write down all the questions that you have for a defendant. Send those questions and a "notice of deposition" to the court reporter.
3. The defendant must answer your questions under oath to a court reporter, who will write down what they say. The court reporter will then give you a transcript of the defendant's responses.

Preparing for Your Own Deposition

As the plaintiff in a lawsuit, you likely will be deposed by the attorneys for the defendants. Remember that they are trying to prepare for a trial against you. Your goal here is not to win your case or to change the facts. Instead, you should tell the full truth, while giving as few admissions as possible that could be used against you.

Your deposition is *not* the time for you to tell your story. You will have a chance to do that later in the case. Your deposition is a time to answer questions.

You must tell the truth in a deposition, because you are answering questions under oath. However, you do not need to *volunteer* information. Here's an example: they might ask you, something like "do you know the time?" In a normal conversation, you might say "yes, it's 2 PM." In deposition world, you can simply answer "yes." **Just answer the question and then stop talking.**

When you are being deposed, only talk about what you actually remember, saw, heard, or did. Do not speculate or assume what *might* have happened. If they ask about something someone else did or said, only answer if you were there and remember. It is okay to say that you don't know or don't remember. You can also tell the lawyer if you do not understand a question or ask them to rephrase it.

Take your time answering questions. Depositions can take up to 7 hours (they usually are not that long!), so you have plenty of time and do not need to rush. Take deep breaths and think about your answer carefully. Unless your deposition is videotaped, your silence will not be noted in the transcript, which just includes the words that were said. Try to stay calm, especially if the attorney tries to upset you with questions that seem unfair.

To prepare for your deposition, review any documents you have exchanged in the case. Think of what questions you might want to know if you were a defendant, and practice answering them out loud. Deposition questions can cover any issue that is relevant to the case, which means that almost any question is fair game. For example, be prepared to talk about your conviction and disciplinary history.

At the end of the deposition, the court reporter will ask you if you want to waive or reserve signature. You have the right to review the transcript of your deposition to make sure the court reporter made no mistakes. If you reserve signature, you will get a copy of the transcript to review and sign. If you waive signature, you won't get a chance to review it. This is your choice.

If you want a copy of your transcript to keep, you will need to pay for it. Deposition transcripts can cost hundreds of dollars. If you win your case, you can win this money back, but you will have to pay it upfront.

If Defendants Refuse to Give You Information: Filing a Motion to Compel

If the defendants refuse to provide documents or interrogatory responses, you can file a motion with the court to order defendants to do it. Judges do not like to get involved with discovery disagreements, so be strategic about this.

You *must* try to meet or call with the defendants' attorneys to work out your disagreement before filing a motion to compel. This is difficult in prison, but you should at least write to the attorney to request a phone call. In the motion to compel, describe all attempts you made to contact the defendants' attorneys. Also describe what efforts you made to compromise on the issue, if any.

The defendants might refuse to give you documents because of security concerns. First, see if you can work out an agreement with the attorneys to redact (black out) some information or names in the document. If they still refuse to give you documents, you can ask the judge in your motion to compel to review the documents *in camera* (in their chambers) to decide whether you should be entitled to see them.

For "security reasons," you are very unlikely to be able to review some documents—like statements from confidential witnesses or STG information. If you think those documents are truly essential, file another motion for appointment of counsel asking the judge to appoint a lawyer to your case. In some cases, lawyers may be allowed to review documents that their incarcerated clients cannot because of internal security concerns in the prison.

After Discovery Ends: Summary Judgment

After the discovery stage is over, you will likely need to respond to the defendants' motion for summary judgment. Summary judgment is covered by Rule 56 of the Federal Rules of Civil Procedure. In a motion for summary judgment, a judge reviews all the evidence in the case and does sort of a trial on paper. The judge's main goals at this stage are to see whether there are factual issues for a jury to decide, and whether the law clearly decides the issue.

When you are responding to a motion for summary judgment, outline the key evidence in your case. Respond to (admit or deny) every fact in the defendants' statement of facts. Also write your own statement of facts. Use documents that you got in discovery and quote deposition testimony, making sure you include a citation for every fact. Key facts that are disputed should go to a jury to decide.

Also show that the law is on your side (you will need to do legal research). Compare the facts of your case to other cases to show that you should win, or to show how important the factual disputes are. You can also file a motion for summary judgment for some or all of your claims.

If you pass summary judgment without your case being dismissed, try filing another motion for appointment of counsel. Judges are the most likely to grant these at this point in a case, because the next step is a jury trial!

We wish you the best of luck in completing discovery. There are several resources that dig deeper into this topic and have helpful tips. We recommend the following:

Each court has a "*pro se* litigant guide" which you can request by mail from the court.	John Boston: *Prisoners Self-Help Litigation Manual, 4th Edition* ($69.95) Prison Legal News P.O. Box 1151 Lake Worth, FL 33460	*Prison Legal News* (12 month subscription is $30) P.O. Box 1151 Lake Worth, FL 33460
Southern Poverty Law Center: *Protecting Your Health & Safety* ($16) Prison Legal News P.O. Box 1151 Lake Worth, FL 33460	*The Jailhouse Lawyer's Handbook*. (Free!) The Center for Constitutional Rights 666 Broadway, 7th Floor New York, NY 10012 *This is also available online.	Columbia University: *Jailhouse Lawyers Manual* ($30) Columbia Human Rights Law Review, Attn: JLM Order 435 W. 116th St. New York, NY 10027 *This is available online for free.