

# Table of Contents

## CHAPTER 1. INTRODUCTION

- § 1:1 Purposes and goals of discovery
- § 1:2 History and interpretation of the discovery statutes—  
Relationship to the Federal Rules of Civil Procedure
- § 1:3 Judicial interpretation of discovery statutes
- § 1:4 Uniform court rules
- § 1:5 Abuses and dangers of discovery
- § 1:6 Expenses of discovery—Who pays

## CHAPTER 2. GENERAL CONSIDERATIONS

- § 2:1 Introduction
- § 2:2 Planning discovery
- § 2:3 Ethical concerns in conducting discovery
- § 2:4 Obtaining government records—Open Records Act
- § 2:5 —Freedom of Information Act
- § 2:6 Discovery from other states
- § 2:7 Discovery from other countries
- § 2:8 Discovery from the trial court and obtaining court  
records

## CHAPTER 3. COURTS AND PROCEEDINGS IN WHICH DISCOVERY IS POSSIBLE

- § 3:1 Civil cases in courts of record
- § 3:2 Criminal cases
- § 3:3 Habeas corpus cases
- § 3:4 Juvenile courts
- § 3:5 Discovery in the magistrate court
- § 3:6 Administrative agency hearings
- § 3:7 Civil cases in other courts not of record
- § 3:8 Special statutory proceedings

## CHAPTER 4. GENERAL PROVISIONS FOR DISCOVERY

- § 4:1 General provisions governing discovery
- § 4:2 Introduction
- § 4:3 Who may engage in discovery
- § 4:4 Duration, timing, and sequence of discovery
- § 4:5 Scope of discovery in civil cases
- § 4:6 Scope of discovery—Insurance agreements

- § 4:7 Protective orders—Grounds
- § 4:8 —Statutory “apex doctrine”
- § 4:9 —Practice and procedure
- § 4:10 —Remedies
- § 4:11 Using a final pretrial order to control and conclude discovery
- § 4:12 Scheduling and preliminary pretrial orders; Uniform Superior Court Rule 5.4
- § 4:13 Enforcement of scheduling orders
- § 4:14 Other pretrial management issues
- § 4:15 Supplementation of answers
- § 4:16 Modifying discovery procedure by stipulation
- § 4:17 Filing of discovery materials and certificates of service for unfilled pleadings

## **CHAPTER 5. PRIVILEGES AND CONFIDENTIAL INFORMATION**

- § 5:1 Privileges Uniform Rule: General principles
- § 5:2 Information in the possession of the state
- § 5:3 Incriminating matters
- § 5:4 Trade secrets
- § 5:5 Income tax returns and other financial information
- § 5:6 Attorney-client—Generally
- § 5:7 —Corporations and other organizations as clients
- § 5:8 Accountant-client
- § 5:9 Husband-wife
- § 5:10 Physician-patient; HIPAA
- § 5:11 Mental health practitioners
- § 5:12 Invasion of privacy liability for disclosure of medical and psychiatric records
- § 5:13 Medical review committees and peer review organizations
- § 5:14 News media
- § 5:15 Procedural considerations for discovery of confidential materials
- § 5:16 Sealing court records
- § 5:17 Use of pseudonyms and fictitious names

## **CHAPTER 6. DISCOVERY OF TRIAL PREPARATION MATERIALS FROM ANOTHER PARTY**

- § 6:1 Trial preparation materials—Statute and Uniform Rule
- § 6:2 —Introduction
- § 6:3 Background history of “work product”

## TABLE OF CONTENTS

- § 6:4 Trial preparation materials that can be protected
- § 6:5 Conditions for discovery of trial preparation materials
- § 6:6 Production of statements of another party

## **CHAPTER 7. DISCOVERY FROM EXPERTS RETAINED BY ANOTHER PARTY**

- § 7:1 Experts—Statute
- § 7:2 —Generally
- § 7:3 —Who are retained to testify
- § 7:4 —Who are retained but will not testify
- § 7:5 —Who are not retained
- § 7:6 Planning expert testimony—*Daubert* challenges
- § 7:7 Assessment of fees

## **CHAPTER 8. DISCOVERY BEFORE AN ACTION IS FILED OR WHILE AN APPEAL IS PENDING AND POST-JUDGMENT DISCOVERY**

- § 8:1 Depositions before an action is filed or while pending  
appeal
- § 8:2 Purpose and scope of the deposition
- § 8:3 Contents of the petition
- § 8:4 Notice and service of the petition
- § 8:5 Contents of the order allowing examination
- § 8:6 Conduct of the examination by deposition
- § 8:7 Conduct of the examination by inspection of documents  
and by physical examinations
- § 8:8 Depositions pending appeal
- § 8:9 Other actions to perpetuate testimony
- § 8:10 Post-judgment discovery

## **CHAPTER 9. DEPOSITIONS UPON ORAL EXAMINATION**

- § 9:1 Depositions upon oral examination
- § 9:2 Scope of examination
- § 9:3 When a deposition may be taken
- § 9:4 Taking the deposition of a person—Who can be  
deposed
- § 9:5 Taking the deposition of an organization
- § 9:6 Taking the deposition of a “high official”: The apex  
doctrine statute
- § 9:7 Taking the deposition of a person in prison
- § 9:8 Persons who may take depositions

- § 9:9 Disqualification of persons who take depositions
- § 9:10 Place of taking the deposition
- § 9:11 Notice of examination or subpoena
- § 9:12 Production of documents at deposition
- § 9:13 Ensuring the attendance of deponent
- § 9:14 Failure to give proper notice or serve the subpoena
- § 9:15 Failure to attend a deposition
- § 9:16 Recording testimony; obtaining copies of the transcript
- § 9:17 Who can be present at the deposition
- § 9:18 Conduct of the examination—Duration
- § 9:19 Objections concerning the deposition or testimony
- § 9:20 Motion to terminate or limit the examination
- § 9:21 Submitting the transcript to the deponent
- § 9:22 Certifying and filing the deposition

## **CHAPTER 10. DEPOSITIONS UPON WRITTEN QUESTIONS**

- § 10:1 Depositions upon written questions
- § 10:2 Persons whose depositions may be taken by written questions
- § 10:3 Attendance of the deponent
- § 10:4 Serving notice and written questions upon the parties
- § 10:5 Examination of the deponent
- § 10:6 Certification, filing, and use of the depositions
- § 10:7 Protective orders
- § 10:8 Production of documents in connection with the deposition

## **CHAPTER 11. USE OF DEPOSITIONS IN COURT PROCEEDINGS; EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS**

- § 11:1 Use of depositions—Statute
- § 11:2 —In general
- § 11:3 Use of depositions for impeachment purposes at trial
- § 11:4 Use of depositions as evidence at trial—Generally
- § 11:5 Deposition of adverse party as evidence
- § 11:6 Use of deposition as evidence when witness is not available
- § 11:7 Deposition of available witness as evidence
- § 11:8 Use of part of deposition as evidence
- § 11:9 Use of depositions as evidence in motion practice
- § 11:10 Use of depositions which were taken for discovery as evidence

## TABLE OF CONTENTS

- § 11:11 Taking depositions to the jury room
- § 11:12 Use of depositions which were taken in another proceeding
- § 11:13 Objections concerning the deposition or testimony

## **CHAPTER 12. INTERROGATORIES**

- § 12:1 Interrogatories to parties
- § 12:2 Advantages of interrogatories as a method of discovery
- § 12:3 Disadvantages of interrogatories as a method of discovery
- § 12:4 Who can be served with interrogatories
- § 12:5 When interrogatories can be served
- § 12:6 Form and number of interrogatories
- § 12:7 Scope of interrogatories and responses
- § 12:8 Use of interrogatories to identify documents, exhibits, and witnesses
- § 12:9 Answers to interrogatories—Procedural considerations
- § 12:10 —Option to produce business records
- § 12:11 Objections to interrogatories
- § 12:12 Motions for protective orders and to compel answers
- § 12:13 Use of answers to interrogatories at trial or in consideration of motions

## **CHAPTER 13. PRODUCTION OF DOCUMENTS AND THINGS; INSPECTION OF LAND**

- § 13:1 In general
- § 13:2 Scope of inquiry
- § 13:3 Procedure
- § 13:4 Production from nonparties
- § 13:5 Subpoenas for production of documents and notices to produce
- § 13:6 Production of computer and other electronic records
- § 13:7 Use of documents produced during discovery
- § 13:8 Child pornography provisions

## **CHAPTER 14. MENTAL AND PHYSICAL EXAMINATION OF PERSONS**

- § 14:1 In general
- § 14:2 Criteria for obtaining order requiring examination
- § 14:3 Procedure to obtain order

- § 14:4 Discretion of court to grant order; consequences of refusal
- § 14:5 Contents of order
- § 14:6 Report of examination
- § 14:7 Waiver of any physician-patient privilege

## **CHAPTER 15. REQUESTS FOR ADMISSION**

- § 15:1 Requests for admission
- § 15:2 In general
- § 15:3 Use of admissions
- § 15:4 Timing of requests for admissions
- § 15:5 Scope and form of requests for admission of facts and opinions
- § 15:6 Requests for admission of genuineness of documents
- § 15:7 Response to request; time for response; determination of sufficiency
- § 15:8 Withdrawal or amendment of admissions
- § 15:9 Effect of admissions; distinction between request to admit and admissions made in pleadings

## **CHAPTER 16. COMPELLING DISCOVERY AND SEEKING SANCTIONS**

- § 16:1 Failure to make discovery; motion to compel; sanctions; expenses
- § 16:2 Failure to make discovery—In general

### **I. OBTAINING ORDER TO COMPEL DISCOVERY**

- § 16:3 Motion to compel discovery
- § 16:4 Award of expenses for motion seeking order to compel discovery

### **II. SANCTIONS FOR FAILURE TO COMPLY WITH ORDER COMPELLING DISCOVERY**

- § 16:5 Sanctions—In general
- § 16:6 —Facts taken as established
- § 16:7 —Disobedient party may not introduce evidence
- § 16:8 —Strike pleadings, enter judgment against disobedient party, or stay proceedings
- § 16:9 —Find disobedient party in contempt
- § 16:10 —Order involving examination of a person
- § 16:11 Award of expenses where discovery order disobeyed

TABLE OF CONTENTS

**III. SANCTIONS FOR FAILURE TO PROPERLY ADMIT**

- § 16:12 Award of expenses when another party fails to properly admit

**IV. SANCTIONS FOR FAILURE TO ATTEND DEPOSITION, ANSWER INTERROGATORIES, OR RESPOND TO REQUESTS TO PRODUCE**

- § 16:13 Sanctions for failure to make discovery; false answers  
§ 16:14 Sanctions against an attorney  
§ 16:15 Necessity of obtaining protective order to protect against improper discovery

**V. POST-JUDGMENT REMEDIES FOR DISCOVERY ABUSE**

- § 16:16 Extraordinary motion for new trial

**CHAPTER 17. SPOILIATION; SANCTIONS FOR DESTRUCTION OR ALTERATION OF EVIDENCE**

- § 17:1 Inherent court powers where evidence destroyed or spoliated  
§ 17:2 Early discovery conference regarding preservation of evidence  
§ 17:3 Procedures for raising spoliation claims  
§ 17:4 Showing that evidence was in existence and in control of party  
§ 17:5 Litigation contemplated or pending when evidence spoliated  
§ 17:6 Evidence is “necessary” to litigation  
§ 17:7 Remedies for spoliation  
§ 17:8 Witness interference and medical treatment  
§ 17:9 2015 Amendment to Federal Rule of Civil Procedure 37: Sanctions for failure to preserve electronic discovery

**CHAPTER 18. APPELLATE REVIEW OF DISCOVERY ORDERS**

- § 18:1 Appeal of orders denying or requiring discovery  
§ 18:2 Appealing sanction orders  
§ 18:3 Appealing contempt orders  
§ 18:4 Appealing post-judgment discovery orders

- § 18:5 Procedure on appeal
- § 18:6 Using mandamus and prohibition

## **CHAPTER 19. FORMS**

### **I. PRESERVATION OF EVIDENCE**

- § 19:1 Evidence preservation/spoliation letter—Building/roof
- § 19:2 —Apartment complex
- § 19:3 —Tractor-trailer
- § 19:4 —Medical negligence

### **II. PROTECTION OF WITNESSES OR EVIDENCE**

- § 19:5 Motion for protective order with supporting brief

### **III. PERPETUATE TESTIMONY—NO ACTION PENDING OR CASE ON APPEAL**

- § 19:6 Petition to take deposition prior to commencement of action or pending appeal under O.C.G.A. § 9-11-27
- § 19:7 Petition to take deposition prior to commencement of action under O.C.G.A. §§ 9-11-27 and 24-13-150

### **IV. PERSONS WHO TAKE THE DEPOSITION**

- § 19:8 Commission for taking of foreign deposition
- § 19:9 Motion objecting to taking deposition before unqualified officer

### **V. DEPOSITIONS UPON ORAL EXAMINATION**

- § 19:10 Notice to take deposition
- § 19:11 Subpoena to take deposition
- § 19:12 Order for issuance of out-of-state subpoena
- § 19:13 Motion for taking deposition by plaintiff during 30-day period after service of summons and complaint with supporting brief
- § 19:14 Notice of taking deposition by plaintiff during 30-day period after service of summons and complaint
- § 19:15 Motion for taking deposition of person confined in prison
- § 19:16 Notice for taking deposition of designated agent
- § 19:17 Consent order to videotape deposition
- § 19:18 Objection to taking deposition by audio/video recording
- § 19:19 Motion to prevent, terminate, or limit deposition



TABLE OF CONTENTS

**VI. DEPOSITIONS UPON WRITTEN QUESTIONS**

- § 19:20 Notice for taking deposition upon written questions;  
form of questions
- § 19:21 Form of cross-questions and objections
- § 19:22 Form of deposition answers

**VII. DEPOSITIONS—OBJECTIONS TO USE**

- § 19:23 Motion to suppress use of deposition

**VIII. INTERROGATORIES**

- § 19:24 Form of interrogatories (example)
- § 19:25 Answers to interrogatories
- § 19:26 Objections to interrogatories
- § 19:27 Motion for protective order
- § 19:28 Consent order extending time to answer  
interrogatories
- § 19:29 Motion for extension of time to answer interrogatories
- § 19:30 Combined interrogatories and requests for production  
of documents

**IX. PRODUCTION OF DOCUMENTS; INSPECTION  
OF LAND**

- § 19:31 Request to party for production of documents
- § 19:32 Request to non-party for production of documents
- § 19:33 Response to request for production of documents
- § 19:34 Objection to request for production of documents to  
party or non-party
- § 19:35 Motion for order permitting inspection of land with  
supporting brief

**X. EXAMINATION OF PERSONS**

- § 19:36 Motion for physical examination of person with  
supporting brief and order

**XI. REQUEST FOR ADMISSIONS**

- § 19:37 Request for admissions
- § 19:38 Response and objections to request for admissions
- § 19:39 Motion to modify response to request for admissions  
with supporting brief

**XII. COMPEL DISCOVERY; SEEK SANCTIONS**

- § 19:40 Motion to compel discovery with supporting brief

- § 19:41 Motion for sanctions with supporting brief
- § 19:42 Certificate of conference to resolve discovery dispute

### **XIII. MISCELLANEOUS**

- § 19:43 Consent order to extend time for discovery
- § 19:44 Pretrial order provisions on discovery and supplementation
- § 19:45 Request for supplementation of discovery responses
- § 19:46 Sample certificate of service
- § 19:47 Sample Deposition Duces Tecum for Expert
- § 19:48 Sample Scheduling Order for Scheduling Expert Testimony
- § 19:49 Form of post-judgment interrogatories in magistrate court – statutory form
- § 19:50 Form of post-judgment interrogatories (example)
- § 19:51 Motion to compel
- § 19:52 Rule nisi for motion for contempt for failure to comply with order to compel answers to post-judgment interrogatories
- § 19:53 Open Records Act request

### **APPENDICES**

Appendix A. Expert Testimony Checklist—*Daubert* Issues

Appendix B. Checklists

**Table of Laws and Rules**

**Table of Cases**

**Index**