

Why you Need to Know the Questions we Ask in Discovery

When you face a debt collector, there are two very important things you need to know. You need to know exactly what they have that is relevant to the case (either their proof or your defense); and you need to know exactly what they do NOT have so you can argue that they don't have enough. You'll be arguing at some point they don't have enough to prove their case, and proving that means that showing the exact limits of what they have for proof. That is the overall point to most of our defense-based discovery.

At the same time, if you have a counterclaim, or if you think you may have one, there are several other questions you need to ask concerning the history of the debt in question and the status of the debt collector.

When you submit discovery to them, however, they will not want to reveal these things. Instead, they'll send you either (1) nothing at all, or (2) objections to all or almost all your questions, but then a few partial answers they are providing "subject to objection." In other words, you won't know the limits of their information. To get them, you're going to have to take further action.

This is a critical part of your defense. It's what we call the "motion to compel cycle."

Discovery must be "Reasonably Calculated to Lead to Admissible Evidence"

Let's start with the basics.

The general rule for discovery questions is that a party has a right to ask about things "reasonably calculated to lead to admissible evidence." The answers to the questions you ask don't actually have to be admissible in themselves, but they have to lead to them. For example, asking the name and address of a witness won't yield admissible evidence, but the witness might. Anything relevant that isn't privileged will generally be admissible, so relevance is our main guide.

When you get answers to your discovery, you will find that they object to essentially everything. We will therefore show you why each item of our form discovery is, or can be, relevant depending on what your case is. There objections are going to be of two basic types: (1) the assertion of some privilege, or (2) the claim that your discovery is "unduly burdensome."

You Can't Get "Privileged" Information

Regarding privilege, there is practically no legitimate claim of privilege to information in our discovery. We are asking for information that was generated as a result of arms-length negotiations. That is, it was generated in deals between either the debt collector and the original creditor, or between the creditor and you. There's obviously no confidentiality there, but that won't stop them from asserting the

privilege. You must insist on the “attorney-client privilege log” that the rules of civil procedure require. Look that up in your own state’s rules and cite the rule when they make a claim of privilege.

Burdensomeness is, actually, equally absurd in most situations. We are asking for information the debt collector buys, or has access to, from the original creditor, or that the original creditor already has or should have. Regarding the questions we ask of debt collectors about their litigation and so on, this too is information readily accessible to them, so the question comes back to relevance.

Two General Areas of Discovery

Our discovery is directed, in general, to two different types of debt collectors, with different questions for each. If you think the person or company bugging you is a “debt collector” or debt buyer, you will ask one set of questions to try to establish that fact and figure out what they have. If you think you’re dealing with an original creditor you will ask slightly different questions. We’ll note those in our discussion of the specific questions.

Our Discovery, What Each Question Seeks, and Why it Matters

Here are our Interrogatories

1. Please identify each person who either answered, or who was consulted in providing answers to these interrogatories, and state which interrogatory was answered by each such person listed.

Reason: We are entitled to know the people who know stuff that is relevant to the case and what they know. These are potential witnesses for them or us.

2. Identify the alleged Original Creditor of Defendant's Account.

Reason: In this question we’re trying to find out who the original creditor actually was, and it might be someone other than you expect. Whoever it is, though, has the most important records and knows the most about the alleged debt. If it is NOT the person suing you, then we will want to know how the person suing you got the right to sue you.

3. Identify all persons or entities who have ever owned this debt and provide the dates of their ownership.

Reason: This begins to inquire into the chain of title and, again, questions whether the person suing you has the right to sue. Your case may LOOK like it’s an original creditor, but looks are sometimes deceiving – and debt collectors like to hide their identity.

4. Identify every document by which Defendant's Account was transferred to or acquired by you or any other person. This should include bills of sale, attachments to bills of sale, and complete assignment agreements relating to the transaction by which defendant's account was purchased or otherwise acquired.

Reason: If your alleged debt was assigned, there will be documentation. The bills of sale and attachments are relevant to whether the can show “chain of title” (i.e., valid

ownership) of the debt. The Assignment Agreements are different things which describe what the debt buyer can get in the way of records (relevant to their claim that anything is “unduly burdensome”) and also will point to weaknesses of those records, as the original creditor never, as far as I’ve seen, will guarantee that the records are accurate. This should destroy the debt buyer’s claim that they are.

5. Identify each of your employees who has attempted to collect all or any part of the Account Balance from Defendant, describe what actions were taken by each such employee to collect, or attempt to collect the Account Balance from Defendant, and identify all documents created as a result of such attempt.

Reason: This is for debt collector cases where you have a counterclaim, and it seeks information regarding the collection process – looking for violations of the FDCPA.

6. Identify every individual employed by the Original Creditor who had direct or supervisory authority over Defendant's Account (or over the department responsible for collecting Defendant's Account) before it was assigned, transferred and/or sold to you.

Reason: Again, this is for a debt collector case. A central point in debt collection cases is the business records exception, and the person or department that attempted to collect would have made records.

7. Identify any contract or other document within your possession or control that contains Defendant's signature on it.

Reason: You want to know if they have the contract or any writing supposedly with your signature on it making admissions or saying anything damaging to your defense. For both debt buyers and original creditors.

8. Identify all sources, including electronic media, you consulted or upon which you relied in generating any document attached to your petition.

Reason: Debt buyers only have digital records. We need to know what those records are, and we need to see them to know whether the conclusions they draw from the data are valid.

9. Do you contend that any document attached to your petition is an actual statement of account created by the original creditor (or a photocopy of such)? If your answer is "no," state how and by whom the document was generated. If your answer is “yes,” state how and in what form the document came into your possession.

Reason: For debt buyers only. They got data, and they created the statements themselves. They will have sworn, though, that the statements were created by the original creditor. You need to look at the data to see if it is accurate.

10. For each individual identified in response to Interrogatory 9, describe the person's academic or business background and state the person's qualifications in knowledge, training or information regarding the authenticity or accuracy of the documents.

Reason: Testing the accuracy of the records and the process they used to create these (fraudulent) documents.

11. Did you ever make any agreement to lend money or provide credit to Defendant? If your answer is yes, state:

- a) The date of the agreement;
- b) The place in which the agreement was made;
- c) The terms of the agreement;
- d) Identify all documents, notes and records which relate any terms of the agreement;
- e) Identify all persons present at the time the agreement was made.

Reason: Testing again whether the person suing you is the original creditor or a debt buyer. If original creditor, we want to test the validity of the claim and their evidence.

12. State the total amount of *principal* that you contend Defendant borrowed from the Original Creditor, give the date and amount on which each principal sum was borrowed, and identify the goods and/or services that Defendant purchased with the credit that was given.

Reason: Debt collectors never know the answer to this question, but the amount they're suing you for includes interest and fees. If they're suing you under a contract that they can't prove or that doesn't show a right to interest and fees, asking for them violates the FDCPA. An original creditor should know how much of the money was originally lent and how much they're seeking in fees and interest. Sometimes these amounts are not accurate or violate the law.

13. State the amount of *interest* that was charged to Defendant pursuant to each principal sum that was borrowed, and describe the manner in which you calculated the interest.

Reason: This is the other side of the coin in the previous interrogatory.

14. State the amount of each late fee, overlimit fee, membership fee, application fee, or any similar charge that was ever assessed against Defendant with respect to Defendant's Account and identify any statement of terms or conditions according to which the charge was assessed.

Reason: See answer to 13.

15. State the amount of income your company generates from the collection of debts originally owed to others and identify what percentage of your company's income that is.

Reason: To prove that a debt buyer is a “debt collector” under the FDCPA, we must show that their “principle business” is the collection of debts. These questions are directed towards that where you think you’ve got a debt collector.

16. Identify any part of your business not associated with the collection of debts originally owed to others and state what percentage of your income is generated by those parts of your business.

Reason: See question 15.

17. Do you contend that your principle business is not the collection of debts? If your answer is "yes," then state all facts in support of that contention.

Reason: See question 15. If they say they are not debt collectors, we want to know all the facts supporting that contention.

18. State your net worth from the date of your answers to these interrogatories back to the date you first attempted to collect the alleged debt you are attempting to collect in this law suit.

Reason: If you ARE dealing with a debt collector and have a counterclaim, this information is directly relevant to how much the court should assess in the “statutory penalty” part of the relief you requested.

19. As of the date of your answers to these interrogatories, state the total amount of money you claim Defendant owes you, state the amount of that money that constitutes (1) principal, (2) interest, (3) attorney's fees, (4) late fees; (5) overlimit fees, (6) application fees, (7) membership fees and (8) court costs.

Reason: See question 12. This just asks for all the amounts broken down into categories.

20. With respect to your answer to Interrogatory 19, list every document that supports your calculation of these figures, identify every document that authorizes you to collect these amounts, give a detailed description of how you calculated these figures, and identify every individual who has personal knowledge of the accuracy of these figures and/or who has personal knowledge that the figures were accurately calculated or determined.

Reason: This is asking for all their evidence.

21. What is total amount of money you have received in payment toward the Account Balance from any source? As to each payment made, specify the date it was made, by whom, and the amount.

Reason: This question is asking them to identify any payments you may have made. It also is another check on their record-keeping. They have to prove you owe, and haven’t paid,

and that implies they know what you have or have not paid. If they don't know that, you can attack their claim you owe anything.

22. What is total amount of money any person has received in payment toward the Account Balance? As to each payment made, specify the date it was made, by whom, by whom received, and the amount.

Reason: Especially for multiple debt collectors, as in a debt that has been sold more than once, the debt collectors don't know how much you paid. See question 21.

23. Identify any declarations, admissions (implied or express) or statements against interest made by Defendant or Defendant's agents or representatives relating to the subject matter of this litigation, and fully relate all details with regard to each such statement.

Reason: We want to know what, if anything, they'll claim you've said or done that hurts your defense or counterclaim.

24. Have you obtained any written or oral statements from any persons who have any knowledge of the subject matter of this action? If so, state as to each statement:

- a) The name and address of the person making the statement;
- b) The date said statements were made;
- c) Whether the statements were written, oral or by recording device;
- d) The name and address of the person who made the statements;
- e) The name and address of the person in possession of the statements;
- f) Please attach a copy of each such statement.

Reason: Again, this seeks the identification of their witnesses. You can use these statements for cross-examination of the witnesses they identify or other witnesses, and some of them might help.

25. If any person conducted any independent investigation into the authenticity of the debt you are alleging defendant owes plaintiff on behalf of plaintiff, identify that person, all matters investigated, and all findings or conclusions reached by such investigation.

Reason: Debt collectors want to claim that the documents they got from the original creditors are "business records," and usually they try to testify to this themselves. We want to know if they have any basis for that testimony. Some courts have allowed testimony about record keeping from debt collectors who DID investigate the record-keeping and could, in theory at least, testify from knowledge about those records. Without this investigation, they have no special knowledge.

26. If any person conducted any independent investigation into the record keeping or business practices of [original creditor], identify that person, all matters investigated, and all findings or conclusions reached by such investigation.

Reason: See question 25. This brings that question into focus.