

APLI Webinar

Topic: *Discovery 2020*

Tuesday, July 28, 2020

Presentation Part 2 – Overview of the Discovery Process

by Atoosa Mahdavian, Barrister



Atoosa Mahdavian
Barrister

DISCOVERIES:

(Referred to as DEPOSITIONS in the United States)

- **Documentary Discoveries – Rule 30**
- **Oral Discoveries – Rule 34**

What is an examination for discovery?

- An examination for discovery is not a trial but rather a pre-trial process established by the *Rules of Civil Procedure*. This is where lawyers for each of the parties will question the other side, **under oath**, about the matters involved in the lawsuit.

Discoveries (as they are often called) take place **AFTER** pleadings have been completed and **AFTER** the parties have exchanged their documents.

They are held at offices specially set up for this purpose called "Examiner's Offices" (privately operated).

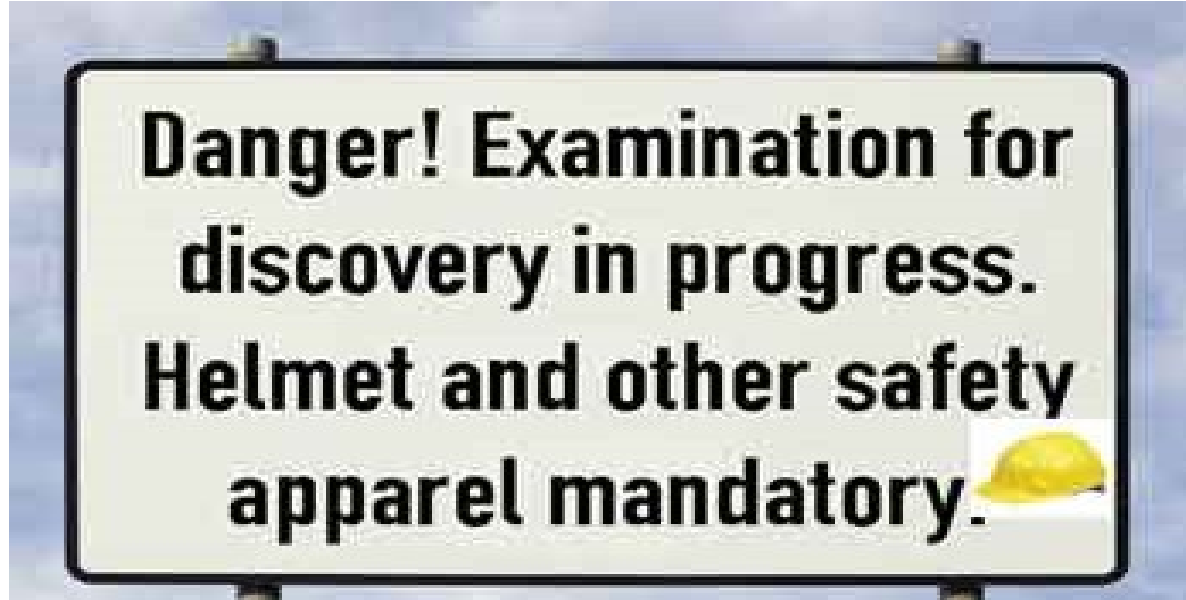


No judge is present because this is not a trial.

- The parties, the lawyers and a court reporter will be there.
- Members of the public are NOT allowed to be present.
- The questions and answers are transcribed by a **reporter** and later, if necessary, can be produced as a written transcript.



What is the purpose of examinations for discovery?

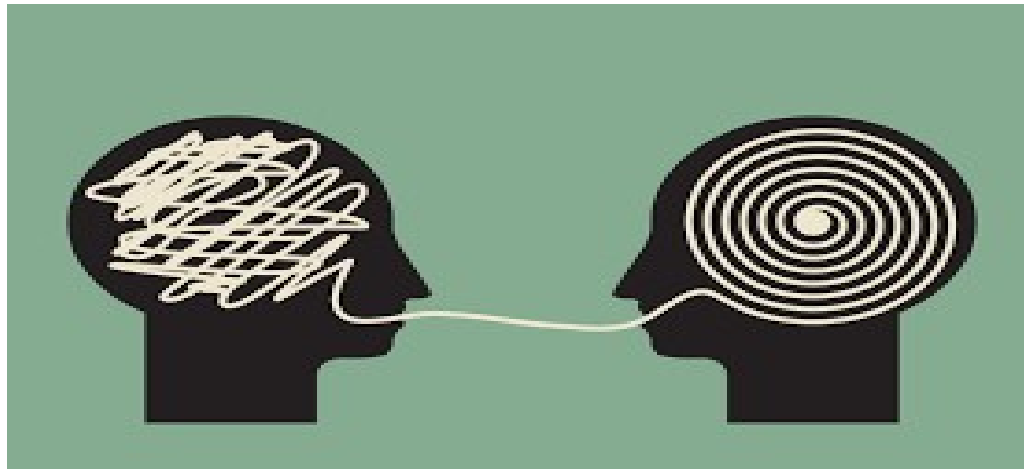


The purpose of discoveries is for the lawyers to examine the opposite party (client). The lawyer doing the examination will try to accomplish at least these basic things:

- To find out what the other party has to say about the matters which are in issue in the lawsuit;
- To see whether there are any areas of agreement among the parties to the lawsuit;
- To try to obtain admissions from another party which can later be used against that party at trial.

Interpreter's Role:

- The interpreter is giving voice to the witness so his/her evidence is given in a complete, accurate and truthful way. They are not there to add, embellish or otherwise comment on what they hear.



5 Ways to Make Sure the Interpretation is Accurate and Useful

#1

To the extent possible, lawyers need to make sure the court-certified interpreter can interpret in the exact language that is needed. In many countries, there are numerous dialects or variations of a certain language that are spoken. We do not want the evidence getting lost in translation...

#2

The court-certified interpreter who attends a discovery and/or trial has to be sworn in: “*Do you solemnly swear or affirm that you will accurately translate from English into _____ and from _____ into English to the best of your ability?*”

#3

There is a huge problem if the interpreter starts “answering” questions rather than truly repeating exactly what the witness says.



#4

If a lawyer senses that this is happening, it is absolutely imperative to stop the proceedings and instruct the interpreter accordingly.

- For example, if the question asked is, “*What are your children’s names?*” but the interpreter answers and says, “*His children are Fatina, Elisha and Marina*” then that is not the witness’ words exactly. The transcript then becomes confused because it is not the witness’ words but rather the interpreter’s answers. In such a situation, the court-reporter has to make a note on the record.

#5

Similarly interpreters should not provide commentary or fill in the blanks.

- For example, if the interpreter says “*He said Broadway, but I think he really meant Colorado Boulevard,*” again, this is a **no-no**. The lawyer will have to interrupt the proceeding and instruct the interpreter not to add opinion or commentary and to just do a straight translation. Similarly, if the lawyer asks a question that the interpreter is unsure, he/she must seek clarification, in English, before attempting to translate it for the witness rather than trying to guess what the lawyer meant.

● The **good translator** has a wide lexicon. He/she has background *knowledge* on a theme because while translating it is often necessary to understand the content of a subject - whether it be technical translation, legal translation or translation of documents.

Knowledge of terminology and understanding is essentially important during **oral translation**, especially during simultaneous interpretation.

