

MACDL Paralegal Training 2011

TRACKING DISCOVERY AND DEADLINES

Discovery- The Basics

- One of the most important things you must do in a DWI case for your attorney is prepare a basic motion for discovery. In your electronic materials, you will find the formal discovery request that my office uses. They file this immediately with our entry as soon as the client has officially hired us. This is the start of the discovery process.

Formal Discovery- What it Looks Like

IN THE CIRCUIT COURT OF GASCONADE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 v.)
)
)
 CLIENT NAME,)
)
 Defendant.)

Case No.: Unknown

Charges: DWI; Crossed Center Line

MOTION FOR DISCOVERY

COMES NOW the Defendant, pursuant to Missouri Rule of Criminal Procedure 25.03, and requests that the State disclose the following information:

1. The names and last known addresses of persons whom the State intends to call as witnesses at any hearings or at the trial, together with their written or recorded statements, and existing memoranda reporting or summarizing part or all of their oral statements.

2. Any written or recorded statements and the substance of any oral statements made by the Defendant or by a co-defendant, a list of all witnesses to the making, and a list of all witnesses to the acknowledgment of such statements and the last known address of such witnesses.

3. Those portions of existing transcript of grand jury proceedings which relate to the offense with which the Defendant is charged, containing testimony of the Defendant and testimony of persons whom the State intends to call as witnesses at a hearing or trial.

4. Any existing transcript of the preliminary hearing and of any prior trial held in the

defendant's case if the state has such in its possession or if such is available to the state.

5. Any reports or statements of experts, made in connection with this case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

6. Any books, papers, documents, photographs, or objects which the State intends to introduce into evidence at the hearing or trial or which were obtained from or belong to the Defendant.

7. Any record of prior criminal convictions of persons whom the State intends to call as witnesses at a hearing or trial.

8. If there has been any photographic or electronic surveillance (including wiretapping), relating to the offense with which the Defendant is charged, of the Defendant or of conversations to which the Defendant was a party or of his premises; this disclosure shall be in the form of a written statement by counsel for the State briefly setting forth facts pertaining to the time, place and persons making same.

9. Any material or information, within the possession or control of the State, which tends to negate the guilt of the Defendant as to the offense charged, mitigate the degree of the offense charged, or reduce the punishment.

Overview of what the Basic Discovery Request is Asking For

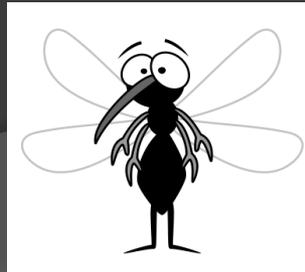
- ◎ The Discovery Request that we file asks for all of the basic items in the case that we will need. Here are some of the items that we are requesting:
 - Reports
 - Videos
 - Written Statements of Experts
 - Audio
 - Photos
 - List of Witnesses

Additional Discovery Requests- Situations in which to Request More Discovery

- ◎ In more complex situations, I often have my staff request Additional Discovery from the Prosecuting Attorney. In your electronic materials, you will find Additional Disclosure Requests dealing with blood test cases and checkpoint cases.
 - I always need the Litigation Support Package in regards to blood testing. This is the packet from the lab that shows me how the testing was done and how they got the test results.
 - I always need more information on a checkpoint case. checkpoints have extremely strict guidelines that must be followed in order to not violate Fourth Amendment rights. By getting a copy of these guidelines in advance of trial, I can identify potential issues.

Docketing Discovery Requests

- As a rule of thumb, you should calendar out about 30 days after filing to call and follow up with your discovery requests.
- Calling to follow up and making sure your attorney has everything they need for trial and/or negotiations is key!
- If all else fails, **BE A POLITE PEST!** The more you call, the more likely you are to receive what you need.

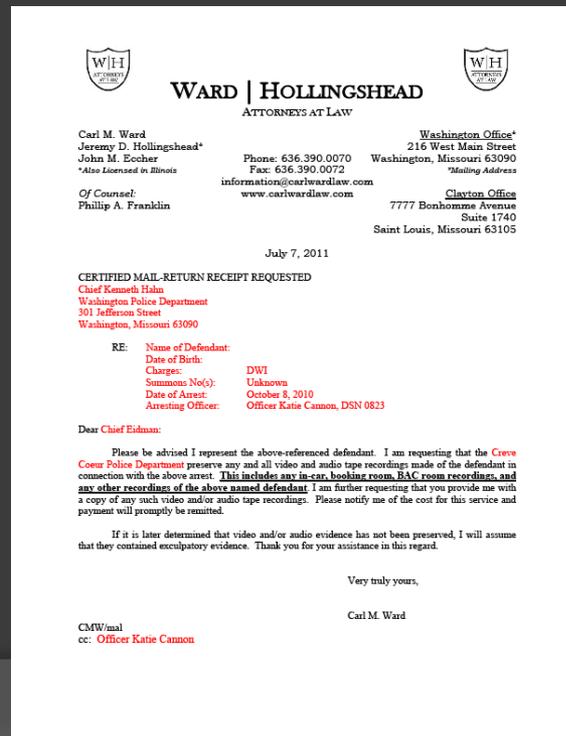


Docketing Discovery Requests, Part 2

- ⦿ As soon as you receive in a notice of a trial of any sort. You need to docket AT LEAST 14 days out from trial to make sure that you have received all the discovery that you have requested. This discovery is crucial and can mean the difference between winning and losing a case!

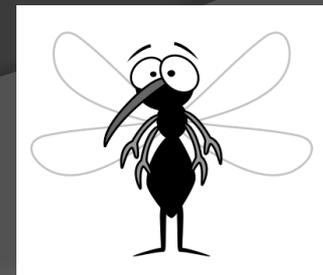
Video Preservation Letter- Ensuring Discovery Evidence is Not Destroyed

- My office always sends out Video Preservation requests IMMEDIATELY upon confirmation of hire from the client.
- We send a letter certified to the Chief of Police and one to the arresting officer.
- Here is what the letter looks like:



Docketing Video Request Follow-Up

- ⦿ I always have my office docket 10 days out to call the arresting agency and see if a video exists in the case.
- ⦿ If the agency doesn't know if there is video, leave a message for the Officer directly.
- ⦿ In a municipal agency, often times, we can make the request through the Department.
- ⦿ In a State agency, you usually have to get the video from the Prosecuting Attorney. I always have my staff find out first whether a video exists first before they use their efforts contacting the Prosecutor.
- ⦿ If all else fails, BE A PEST! The more you call, the more likely you are to receive what you need.



Depositions- When to do them and how to set them up

- ⦿ Another great way for your attorney to get discovery is to take depositions.
- ⦿ If your attorney lets you know that a case is likely to go to trial, they will most likely want to depose witnesses in regards to the case.
- ⦿ Ask your attorney if they would like to do depositions, and if so, who they would like to depose.

Steps to Setting Up Depositions

- ◎ Step 1: Identify the witnesses your attorney would like to depose.
 - Arresting officer
 - Assisting officer(s)
 - If it is a blood test case depose:
 - the criminalist (i.e. lab technician)
 - Blood drawer (medical technician or nurse)
 - In a breath test case, possibly depose the Type II and/or Type III
 - Rule of thumb: **ASK YOUR ATTORNEY WHO THEY WANT TO DEPOSE!**

Step 2: Contacting the Prosecutor

- After you determine who you want to depose, you need to contact the Prosecuting Attorney in the case. This can be identified in your previous Discovery that you should have already received:

Brian Keedy,
Prosecuting Attorney for the
County of Camden, State of Missouri, by


Steven M. Kretzer, Bar No. 56950
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

A copy of this Response to Defendant's Request for Disclosure and attached records and documents was served upon Carl M. Ward, defendant's attorney of record as disclosed by pleadings of record in the above cause, by mailing a copy of this Response to Defendant's Request for Disclosure to 216 West Main Street PO Box 184, Washington, MO 63090 on June 14, 2011.

The original of this Response to Defendant's Request for Disclosure was filed in the court having jurisdiction to try the case.



Step 2: Contacting the Prosecutor

- ⦿ Have your attorney's available dates ready when you call the Prosecutor on the case.
- ⦿ Let them know who you want to depose.
- ⦿ Make sure the dates of deposition are prior to the trial date.
- ⦿ I have my office ask them whether they want you to subpoena the witness or if they will take care of it. This is a courtesy to the Prosecutor. Most Prosecutors appreciate having this option. It also allows us to specifically identify the items that we want the witness to bring in the form of a subpoena attachment.

Step 3: Subpoena the Witness (If Desired by Prosecutor)

- Request subpoenas from the Court. I always have my staff ask for extras and we keep them on file so we don't have to request them the next time.
- Subpoena example:

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
SUBPOENA
(Order to Appear and Produce Documents)

Plaintiff/Prosecutor

Attorney for Plaintiff/Prosecutor

Case Number: _____
Division: _____

Defendant/Respondent

Attorney for Defendant/Respondent

SPECIAL NEEDS: If you have special needs addressed by the Americans with Disabilities Act please notify the Circuit Clerk's Office at 314-651-4023, Fax 314-671-5329, or TTY 314-651-4066, at least three business days in advance of the court proceeding.

TO: _____

YOU ARE COMMANDED TO APPEAR BEFORE THE ST. LOUIS COUNTY CIRCUIT COURT
Court/Inhouse _____ Date _____
7500 Carondelet Ave. _____ Time _____
Clayton, Missouri 63105 _____ Division _____

and thereafter from time to time until the case be disposed of or you are finally discharged

To testify on behalf of _____

To produce the following: _____



WITNESS, Jean M. Gilmer, Clerk of Circuit Court with the seal thereof hereto affixed, at the office of the County of St. Louis, on _____, 200____.

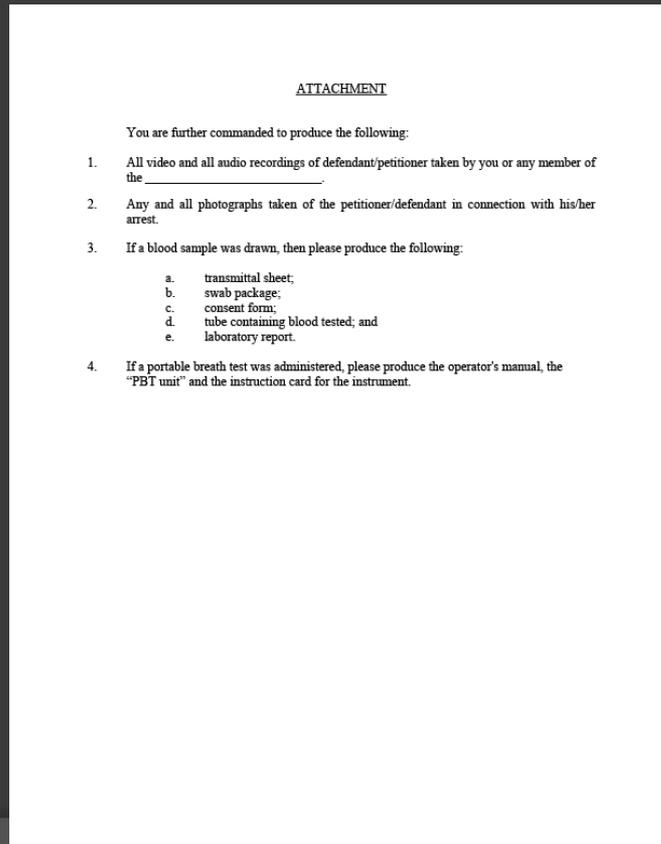

JEAN M. GILMER, Circuit Clerk

The attorney or party requesting attendance of witness:
 The date and hour that your testimony shall be required cannot be stated with certainty. Therefore, you are directed to telephone _____ at _____ between the hours of 9:00 a.m. and 5:00 p.m. on _____, 200____, at which time you will be further instructed concerning your appearance. Such instruction may require that you appear on a subsequent date, without further personal service.

CCJL3724 Rev 02/04

Step 3: Subpoena the Witness: Attachments

- Ask your attorney what he wants the witness to produce at the deposition. In your electronic materials, you will find various different attachments we use for depositions. Here are a few examples of attachments we use:



Standard Attachment
for Arresting Officer

Step 3: Subpoena the Witness: Examples of Attachments

ATTACHMENT

- Laboratory Quality Policies and Manual (however named) sections dealing with sample processing, chain of custody, standards, calibration and testing method use on defendant's sample
- Laboratory Protocols (e.g., prescribed minimum testing) for sample tested from defendant
- Laboratory technical procedures (Standard Operating Manual)
- Laboratory Quality Assurance/Quality Control Procedures (however named) including:
 - Implementation Procedures for the Quality Program
 - Internal audit procedures
 - Training and qualification procedures
 - Contamination control procedures
 - Document control procedures
- Copies of internal audit(s); last 3 years.
- Copies of internal audit reports generated during the year, or external audit report received during 2006 through 2009.
- Inventory of Laboratory Equipment used to process and test defendant's blood.
- Most recent ASCLD-LAB application for accreditation.
- Statement of Qualifications for Laboratory Personnel including the technician involved in this matter, all supervisors and the lab director.
- Most recent ASCLD-LAB accreditation review report.
- ASCLD-LAB Grade computation sheets.
- Final ASCLD-LAB accreditation report.
- Copies of all written procedures for each method used to perform evidence tests in this matter, including techniques used, procedures used for screening, sample preparation, extraction, clean-up, separation, analysis, instrumentation, instrument calibration records for 90 days before and 90 days after test was performed, qualitative identification, quantization, and quality control.
- Results of validation studies for each method or methods used to analyze (copy the complete validation file, including assumptions, data, results, and conclusions).
- External proficiency testing results for each of the methods used to perform evidence testing (including sponsoring agency, date(s) performed, responsible parties, responsible analyst(s), true values, reported results, raw data, scores, related correspondence, and corrective action records, (as appropriate)).
- Production data: for the period in which the casework was performed, the numbers of relevant tests received / performed per month and per year.
- Copies of bench notes, log books, communication logs, all records pertaining to case samples or instruments; records and photographs describing the condition of the evidence.
- Copies of records documenting observations, diagrams, notations, or measurements regarding case testing.
- Instrument or equipment run logs for the instrument used on case samples on the day(s) case sample were tested (including identification of all unknown samples, calibrators and controls).
- Instrument tuning and calibration records (e.g., as prepared, and as determined values for initial and continuing calibrations applicable to case samples; as prepared and as determined values for second source calibration check samples).
- Instrument maintenance and repair records for the period 90 days before and after the testing of evidence in this case.
- Source, preparation and usage records demonstrating trace ability and shelf life for standard materials and solutions used for calibration and quality control (including unique identification, origins, dates of preparation and use, composition and concentration of prepared materials, supplier certifications, shelf lives and storage conditions).
- Source, preparation, and usage records for reagents and materials used during testing.
- Control Charts used to monitor instrument or method performance during the period in which case samples were processed.
- Raw and processed data for case and associated Quality Control samples, including all data excluded by analyst. (Both written and read-only copy of electronic data and necessary software to review same). (Defendant hereby agrees to protective order on the software to not disclose and use for this case only).
- As prepared and as determined values for all blanks, replicates and controls relevant to case samples.
- For quantitative analysis (as appropriate). Verification of calibration criteria for volumetric and gravimetric equipment (e.g. variable volume pipettes, balances).
- Copies of nonconformance reports for issues with potential to impact case samples or results.
- Records of internal independent reviews (technical and administrative) of each case results and reports.
- Results of environmental monitoring for parameters relevant to test methods.
- Results of contamination control surveys for species relevant to test methods.
- A copy of most recent Curriculum Vitae.
- Copies of all certificates of completion and training materials related to toxicology.
- Copies of all university and post university transcripts and degrees.
- Copies of all performance reviews.

Step 4: Serving the Subpoena

- ⦿ In many cases, my firm prefers to use Special Process Servers as opposed to a deputy sheriff in the county of service
- ⦿ By using a Special Process Server, you can keep careful track of subpoena service.
- ⦿ To find a Process Server on the Eastern side of the State, you can contact my office, info@wardhollingshead.com

Step 4: Notify the Court of Depositions

- You should always notify the Court of your intent to take depositions. In your electronic materials, you will find a Notice of Deposition. File one with the Court and make sure you send a copy to the Prosecutor. Here is what it looks like:

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,)
)
Plaintiff,)
)
v.)
)
)
CLIENT NAME,)
)
Defendant.)

Case No.:

Division:

NOTICE OF DEPOSITION

Notice is hereby given that depositions in the above matter will be taken on **Friday, June 3, 2011, at 1:00 p.m.** at the Office of the Prosecuting Attorney, Mr. Patrick Carmody, 1114 Market Street, St. Louis, Missouri 63101. Witnesses to be deposed:

Officer Ray Collins, Saint Louis Metropolitan Police Department.

Respectfully submitted,

WARD | HOLLINGSHEAD
Attorneys at Law

By: _____
Carl M. Ward #34295
216 West Main Street
Post Office Box 184
Washington, Missouri 63090
Telephone: (636) 390-0070
Facsimile: (636) 390-0072
Email: information@carlwardlaw.com
Attorney for the Defendant

Certificate of Service

I hereby certify that a copy of the foregoing was mailed, postage pre-paid, this _____ day of _____, 2011, to: Jeffrey Heater, Office of the Prosecuting Attorney, 300 Main Street, Hillsboro, MO 63050.

Step 5: Hire a Court Reporter

- For the Eastern side of the State, we use Concannon & Jaeger Court Reporting- (314) 421-1000, mail@c-jreporters.com
- For the Western side of the State, Jeff Eastman's office uses Midwest Trial Services- (816) 221-1160.

Defendant's Disclosure to the State

- ⦿ Whenever you get in a trial notice, you need to docket about 14 days out from trial to make sure your attorney has answered disclosure requests from the State, if applicable.
- ⦿ Disclosure to the State is due seven days prior to the trial.

Defendant's Disclosure to the State: what to Disclose

- ⦿ ALWAYS ASK YOUR ATTORNEY WHAT TO DISCLOSE.
- ⦿ General items you would normally disclose:
 - What experts you will be using.
 - Statements from the experts.
 - Transcripts from depositions.
 - Videos or reports.
 - Any exhibits your attorney wishes to introduce at trial

Defendant's Disclosure to State- What it Looks Like

IN THE CIRCUIT COURT OF THE COUNTY OF FRANKLIN
STATE OF MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.:
)
 CLIENT NAME,) Division:
)
 Defendant.)

DEFENDANT'S FIRST ANSWER TO DISCLOSURE REQUEST BY STATE

COMES NOW, the Defendant, by and through counsel, and submits the following supplemental answers to the State's Request for Disclosure, to-wit:

1. Any reports or statements of experts made in connection with the above cause which the Defendant intends to introduce into evidence at hearing or trial, except any portions containing statements by the Defendant;

ANSWER: Defendant does not have any reports or statements.

2. The names and last known addresses of persons, other than defendant, who the Defendant intends to call as witnesses at any hearing or at trial, together with their written or recorded statements, and existing memoranda reporting or summarizing part or all of their oral statements;

ANSWER: Any and all witnesses and individuals listed in discovery provided by state and the following:

LIST ALL WITNESSES THAT YOUR ATTORNEY WISHES TO TESTIFY
WITNESS NAME ADDRESS; WHAT THEY WILL BE TESTIFYING REGARDING. EXAMPLE:

William Taylor, 1837 Nottingham Drive, Gainesville, GA 30501;
NHTSA DWI detection, investigation, and police training procedures.

3. Those parts of any books, papers, documents, photographs, or objects, excluding

portions containing statements of Defendant, which the Defendant intends to introduce at a hearing or trial;

ANSWER: LIST ALL ITEMS THAT YOUR ATTORNEY WISHES TO DISCLOSE. EXAMPLES:

The transcript of the administrative hearing in this matter taken on June 1, 2011.

Chapter VIII of the NHTSA Manual.

4. If the defendant intends to rely on the defense of mental disease or defect excluding responsibility, disclosure of such intent in the form of a written statement by counsel for the defendant;

ANSWER: Not Applicable.

5. If the defendant intends to rely on the defense of alibi, a written statement by counsel for defendant announcing such intent and stating the place at which the defendant claims to have been at the time of the alleged offense, and, as particularly as is known, the names and addresses of the witnesses by whom the defendant proposes to establish such an alibi.

ANSWER: Not Applicable.

WARD | HOLLINGSHEAD

Carl M. Ward #34295
216 W. Main Street
P.O. Box 184
Washington, MO. 63090
636/390-0070 FAX 636/390-0072
EMAIL: cward@carlwardlaw.com
Attorney for Defendant

Certificate of Service

A copy of the foregoing was hand delivered this 24th day of January, 2011, to: Stephan M. Lawhorn, Office of the Prosecuting Attorney, 15 South Church Street, Room 204, Union, MO 63084, Attorney for the State of Missouri.

Things to Remember When Answering Disclosure

- ⦿ Always file one with the Court and request a file-stamped copy back.
- ⦿ Always include all of the documents and items you are disclosing with the copy that you send to the Prosecuting Attorney.
- ⦿ When in doubt, disclose. Always make sure that your attorney has checked your disclosure and made sure you have disclosed all of the necessary items.

Things to Remember When Tracking Discovery/Disclosure

- Always calendar follow up!
- Always calendar at least two weeks out from the trial date to make sure that all discovery is received and disclosure is answered.
- **WHEN ALL ELSE FAILS, BE A POLITE PEST!**

