



ADMINISTRATIVE RULES OF MONTANA



37.62.937 OTHER DISCOVERY

- (1) In addition to subpoenas, other methods of discovery shall be available to the parties prior to a contested case hearing. Discovery other than by subpoena is referred to in this rule as "other discovery". Parties may obtain other discovery by one or more of the following methods:
 - (a) depositions upon oral examination or written questions;
 - (b) interrogatories;
 - (c) request for production of documents and other written materials; and
 - (d) request for admissions.
- (2) Because CSSD contested case proceedings are heard on an expedited basis, other discovery may unreasonably delay the hearing. For this reason other discovery may not be had except upon request. A request for other discovery must be made according to and within the time set by the ARM 37.62.919 scheduling order. When other discovery is requested, the OALJ will convene a discovery conference by telephone with all parties. At the conference the OALJ will establish dates for the accelerated completion of each phase of other discovery. Time tables for other discovery set out in the Montana Rules of Civil Procedure may be substantially shortened.
 - (a) If a party objects to the schedule or scope of other discovery, the OALJ will refer the matter to an ALJ for resolution of the dispute and, if appropriate, the setting of a revised discovery schedule. The party seeking discovery has the burden of showing that the discovery is needed for the proper presentation of the party's case. The ALJ may order such other discovery as is deemed appropriate or may deny the request for other discovery.
- (3) Without need for other discovery or subpoena, specific identifiable CSSD records that are relevant to a disputed material fact, upon request and payment of any necessary copying fees, may be made available to a party unless the requested records are expressly exempt or protected from disclosure by state or federal law.
- (4) When other discovery or subpoenas cannot be effectively completed prior to a hearing because of shortened time tables or limitations on the scope of discovery, and the incompleteness causes a surprise element to be introduced during a hearing, the ALJ may order the exchange of additional relevant information or exhibits. The hearing record shall remain open until the time set for the exchange has passed; the ALJ may order the hearing to be reconvened within 10 days after the record is closed. When a hearing is reconvened, it will be for the limited purpose of taking further testimony, or to cross-examine with regard to the exchanged information or exhibits. This remedy may be had in addition to, or in conjunction with, any other remedy provided by these rules.

- (5) When necessary to protect records that are confidential or exempt from disclosure by state or federal law, or to protect a party or person from undue annoyance, excessive embarrassment, oppression or undue burden or expense, upon motion by a party or by the person from whom other discovery is sought, the presiding ALJ may make any order including one or more of the following:
 - (a) that other discovery not be had;
 - (b) that the other discovery may be had only on specified terms and conditions;
 - (c) that other discovery be had only if the discovery is by a method other than that selected by the party seeking discovery;
 - (d) that certain matters should not be inquired into, or that the scope of other discovery be limited to certain matters; and
 - (e) that other discovery be conducted with no one present except persons designated by the ALJ.
- (6) The product of other discovery or subpoena shall not be routinely filed with the OALJ. A party who makes a motion referring to or supported by the product of other discovery or subpoena must support the motion by copies or abstracts of the discovery relied upon. A party who seeks to introduce the product of discovery or subpoena as a part of the record must identify such documents in the witness and exhibit list provided for in ARM 37.62.939. The use of depositions at hearing or in lieu of testimony by a witness shall be governed by the Montana Rules of Civil Procedure. Where consideration of only a portion of a deposition is necessary the ALJ may order the preparation of excerpts to avoid a bulky record or consideration of irrelevant or prejudicial matter.
- (7) The party requesting other discovery is responsible for preparing and making all arrangements for the conduct of the requested discovery. The requesting party is also responsible for the costs of serving the discovery on other parties, deposition costs, the preparation of transcripts of depositions, and the costs of preparing, copying and transmitting discovered materials.
- (8) If a party or other person fails or refuses, without good reason, to be sworn or to answer or respond to a discovery request or subpoena, the ALJ, after directly ordering the party or person to obey the discovery request, may enter an appropriate order that:
 - (a) deems that the facts are established in accordance with the claim of the party seeking to establish such facts through the discovery process;
 - (b) refuses to allow the disobedient party to support or oppose designated claims or defenses, or prohibits that party from introducing designated matters in evidence;
 - (c) invokes the enforcement provisions of 2-4-104(1) and 40-5-226(13), MCA; or
 - (d) assesses sanctions under 40-5-226(14), MCA.

Authorizing statute(s): 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

Implementing statute(s): 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

History: NEW, 2000 MAR p. 3547, Eff. 12/22/00; AMD, 2020 MAR p. 966, Eff. 5/30/20.