****

Children & Family Services

Contra Costa County

**PROTOCOL:
Discovery**

**Overview**

Discovery is a prehearing process in which attorneys and other interested parties receive copies of relevant confidential information from within a Juvenile Case File. Discovery is intended to narrow the contested issues and to expedite settlement. Post-Disposition hearing requests made to Contra Costa County Children & Family Services (CFS) for Discovery of Juvenile Case File records, as well as other records requests, are processed through the Discovery Unit.

All CFS case records remain confidential whether or not a petition has been filed in Juvenile Court (W&IC Section 827; CA Rule of Court rule 5.552). All documents filed in a juvenile court case; any agency document pertaining to a child who is or was the subject of an investigation; or any information, records, reports, photographs, tapes or electronic data obtained during the course of any investigation are confidential.  Reference DM 31-305, Confidentiality.

**What is a Juvenile Case File?**

Rule 5.552. Confidentiality of records (§§ 827, 827.12, 828). For the purposes of this rule, "juvenile case file" includes the following. Refer to CDSS Manual of Policy & Procedures 31-075 for complete listing.

(1)  All documents filed in a juvenile court case;

(2)  Reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers;

(3) Documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court;

(4)  Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers;

(5)  Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program (i.e., case record material entries into CWS/CMS); and

(6)  Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

**Who Has the Right to Inspect a Juvenile Case File?**

* Minor’s parents or guardians
* Minor who is part of the proceeding - Age 12+ may review the case plan with the Social Worker
* Attorneys, Probation Officers, Judicial Officers, and Law Enforcement involved in criminal or juvenile action regarding the minor.
* Other Child Welfare Service agencies (Section 11165.9 of Penal Code)
* Others including, but not limited to, Court personnel, County Counsel, Juvenile Court, Court-appointed Investigators, CASAs, Family Court, and Community Care Licensing.
* Multi-Disciplinary Teams (MDTs) (W&IC 18951 (d)), persons or agencies providing treatment or supervision of the minor.

**Special Discovery Issues**

1. Alleged Father/Presumed Father (or his attorney). Reference Dept. Memo #136 08/3/2004

The rights of an alleged father to receive Discovery on a dependency case are restricted until he raises his status to presumed father.

An alleged father is not entitled to receive information about the mother or the child. When an attorney is appointed to represent an alleged father, the purpose of that appointment is to help him elevate his status to biological or presumed father. CFS is responsible for releasing Discovery that would assist the father, or his attorney, in elevating his status. Only a presumed father, and his attorney, are allowed to receive the same Discovery as other parties, with the exception of confidential or privileged material.

In the case of fathers who were not married to the mother, the presumptive status is recognized for dependency purposes when the Juvenile Court indicates such on the minute order or signs a JV 501-Finding and Judgment.

1. De Facto Parents

De Facto Parents are not entitled to court reports or any other Discovery. Social Workers and Clerks shall not distribute court reports and Discovery to De Facto Parents absent a specific court order. All Resource/Foster Parents have the right to submit updates regarding the child in their care via Caregiver Reports. Caregiver forms, JV290 and 290-INFO, are located on the Judicial Council site and are available in multiple languages.

De Facto Parents have the right to be present at Dependency Hearings, to be represented by counsel, and to present evidence. They do not have the right to cross examine witnesses. A court order regarding Discovery may be requested by the De Facto Parent at the time of the appointment and included on the minute order. CFS staff may wish to ask the Court to address the Discovery question at the time of appointment. Sometimes the Judge has instructed attorneys to file a petition under W&IC 827 to obtain full discovery. For more info, refer to rule 5.534(e) of the California Rules of Court.

1. Names, Addresses and Phone Numbers of Resource/Foster Parents

The names, addresses and phone numbers of all resource families are kept confidential and are not disclosed to parents or legal guardians.

**What Info is NOT Discoverable?**

The following list is a guideline only. It is intended to serve as a reminder of the types of information in the case folder/record that is protected and privileged and therefore is NOT released through Discovery. Refer to DM 31-503, 31-003 Confidentiality.

* Identity of reporting party, including on police reports
* Content of the child abuse report, i.e., screener narrative
* Resource/foster parent’s name, address and phone number
* Address of victim of domestic violence or addresses that are confidential and/or withheld for the protection of the party.
* Personal information about relative assessed for placement
* Complaints/referrals and related information that pertains to others who are not principals in the case i.e., not the parent, guardian, or subject child
* Privileged information:
	+ HIV status of any persons in the case
	+ Reproductive health care of children 12 years and older
	+ Parent’s psychological treatment/evaluation when not court ordered UNLESS the parent’s attorney specifically releases report to all other parties
	+ Child’s psychological/medical treatment when privilege is asserted by child or child’s attorney.

Health and Education Passports (HEPs) only to the child’s attorney and County Counsel, unless child’s attorney agrees to release to other parties.

* + Social Worker’s communication with County Counsel (on yellow colored S3s)
* SS 8572 – Suspected Child Abuse Report
* SS 8583 – Investigation Report
* Social Security Numbers
* Driver’s License Numbers
* Siblings and other minor’s names, UNLESS included in court reports
* Any information that is particularly sensitive or would likely endanger someone if released.

**Discovery Requests Prior to Disposition**

**Pre Disposition:**

* Current, automatic and continuous discovery is provided to attorneys by the case carrying social worker.
* **Specific information may NOT be released and must be REDACTED:**

Refer to list under ‘What Info is Not Discoverable?’

**Discovery Requests Post Disposition**

**Post Disposition:**

Attorneys will make discovery requests to the Discovery Unit. If a Social Worker would like to request discovery for an upcoming hearing/contest in order to disseminate to all attorneys of record at the hearing, then please have the assigned County Counsel for that hearing complete the request form and send it to the Discovery Unit **14-21** days before the hearing. The Discovery Unit will prepare and distribute the Discovery Request Form to the appropriate district office Discovery Clerk/Liaison, who will distribute the Discovery Request Form to the assigned district Social Worker.

1. File all documents appropriately in the case file(s). **Do not drop file**. The Discovery Unit does not file documents into case folders.
2. Enter all Contact Notes into CWS/CMS.
3. Print a new Delivered Service Log (DSL) on behalf of the child(ren) subject to the Discovery Request, for the specific dates requested on the Discovery Request Form.
4. Review the printed DSL, using a YELLOW highlighter to specifically identify information to be redacted. NOTE: Other color highlighters will show up on copies.
5. Identify all other request documents within the file with a BLUE flag.
6. Use a YELLOW highlighter to identify what information should be redacted on the page you have identified with a BLUE flag.
7. Attach the completed Discovery Request form to the DSL and attach to the case file.
8. After the case has been highlighted for redaction, the social worker or unit supervisor will approve the case for discovery by checking items to be redacted (especially DV when applicable) and signing the Discovery Request Form. The completed and signed Discovery Request Form is then sent with the case file to the Discovery Unit at 500 Ellinwood, within 5 working days, via the district office Discovery Clerk/Liaison.

|  |
| --- |
| **Redaction Key** |
| BLUE flag | Identifies the particular page/document requested for discovery |
| YELLOW highlighter | Identifies specific words/sentences within a page to be redacted. |
| Yellow **X** | Identifies a whole page within a document to be redacted. |

**Please note:**

* **Specific information may NOT be released and must be REDACTED:**

Refer to list under ‘What Info is Not Discoverable?’

* Documents not BLUE flagged will be considered NOT part of a discovery request.
* Discovery cannot be completed by the Discovery Unit until the social worker/supervisor of a Post Dispositional case prepares and submits the case folder to the Discovery Unit.
* Late submission will jeopardize statutory timelines and may cause the continuance of a scheduled court hearing.

**Supplemental and Subsequent Petitions**

When petitions are filed by EHSD-CFS, whether original, subsequent or supplemental, district staff will provide all attorneys of record with current, automatic and continuous discovery regarding the facts and documents supporting those petitions until Disposition has occurred.

For case material prior to the events prompting the supplemental or subsequent petition, attorneys are to request discovery through the Discovery Unit.

**District Office Discovery Clerk/Liaison Role**

A clerical contact person in each district office will respond to the Discovery Unit’s request for cases. Prepared case folders need to be received by the Discovery Unit five (5) working days from the date of notice by the Discovery Unit. If the prepared case folder is not received within this time frame, the responsibility for the Discovery then defaults to the Social Worker. The **timely response is necessary** in order to provide the requesting attorney with discovery in ten (10) working days from the time of the request.