CIVIL TRIAL ADVOCACY FOR PARALEGALS



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Civil Trial Advocacy for Paralegals

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1: ORGANIZING AND MANAGING A CIVIL LITIGATION MATTER

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1.0: Introduction

Competency: Organize and manage a civil litigation matter.

Learning Objectives

- Communicate the steps involved in opening a civil litigation file including: performing conflicts checks; completing fee agreements; and drafting engagement, disengagement, and non-engagement letters.
- Synthesize facts to determine appropriate cause of action and defenses
- Assess the applicability of relevant primary law to a set of hypothetical client facts
- Develop a theory of the case
- Prepare a case chronology
- Evaluate facts for strengths and weaknesses
- Explain the paralegal's role in organizing and managing a civil litigation matter

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows. At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

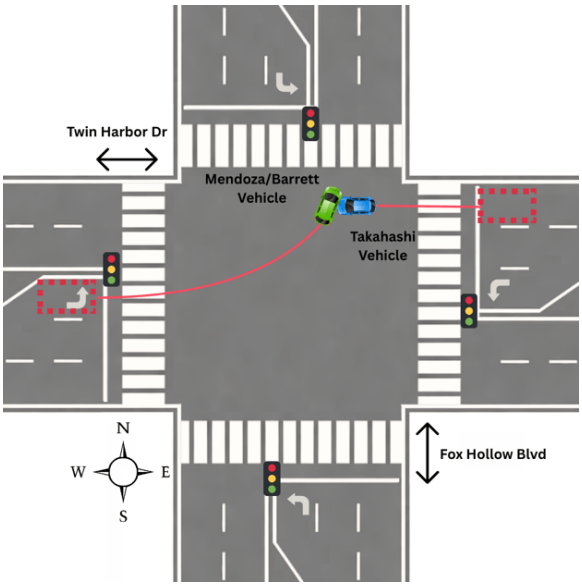

Figure 1.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

Driver and driver, stopped at the light,
City of Minocqua on a late spring night.
Red turns green (or so each says),
Fox Hollow traffic does not wait.

First comes green, then comes go,
Left turn arrow? No one knows.
Mazda turns with a hopeful swing,
Expedition rolls on, straight through the thing.

Then comes crash, loud as can be,
Metal meets metal in the intersection sea.
Front door struck on the passenger side,
Fates collide where signals decide.

Then comes hurt and medical care,
Riley is injured, severe and unfair.
Mendoza shaken, hurt but still strong,
Takahashi stands uninjured all along.

Now come questions, then comes blame,
Both said “green” when officers came.
Witnesses squabble as doubt now plays,
So now it will be in court someday.

Revised by Beth R. Pless from K-I-S-S-I-N-G playground rhyme.

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1.1: Opening a Civil Litigation File

An accident has occurred, people have been injured, and property has been damaged. In our American society, these events are usually followed by the parties seeking legal representation.

When a potential client contacts the law office seeking representation, there are several steps that must be taken to properly set up the client file and avoid running afoul of ethical rules. These steps include:

1. Initial intake and conflicts checking
2. Completing documentation defining the terms of the attorney-client relationship
3. Setting up the internal physical and electronic client file

Initial Intake and Conflicts Checking

While many attorney-client relationships begin with the client telephoning the law office, attorneys are increasingly providing online intake forms or ChatBots as an option for potential clients to inquire about legal representation. Regardless of how contact is initiated, there are several important safeguards that must be in place to comply with ethical rules governing attorney-client relationships.

As you know from other classes, avoiding potential conflicts of interest is critical. Any initial intake procedure should obtain only enough information about the potential client and litigation matter sufficient to allow the law office to determine whether a conflict exists, without delving too deeply into other confidential information. Accordingly, initial information should be limited to:

- Full name, date of birth, address, and other contact information for the potential client.
- Brief description of the accident/incident for which the person is seeking legal representation, including date and location.
- Full name, date of birth, address, and other contact information for potential adversary parties, to the extent the person is able to provide such information.

At this point, the potential client should be informed that the law office does not yet represent them. Below is an example of language that could be used as a disclaimer for an Internet intake form or ChatBot used by a law office.

Example Disclaimer for an Internet Intake Form or ChatBot Used by a Law Office

The submission of information on this law office's website does not create an attorney-client relationship. The law office will only use the information you provide to determine if the firm can assist with your legal inquiry. The law office cannot act as your attorney or provide legal advice until it is known that doing so will not create a conflict of interest. Do not send any information considered to be confidential or secret until the law office has agreed to be your lawyer in this matter. Any information sent to the law office before an official agreement to be your lawyer cannot be protected from disclosure. (WisTech Open. 2026. By Beth Pless. CC BY 4.0.)

The information received during the initial intake is then used to perform a conflicts check in the law office. A thorough conflicts check involves the following steps:

1. Search the law office's internal database to determine whether any of the people who would be parties to the litigation—especially opposing parties—are current or past clients.
2. Complete a "new case and conflicts checking memorandum" to be provided to all law office personnel. The purpose of this memorandum is to determine whether any law office personnel have potential conflicts of interest resulting from previous employment.

Example New Case and Conflict Check Memorandum

PRIVILEGED AND CONFIDENTIAL NEW CASE CONFLICTS CHECK

To: All law office personnel

Date: [date memo is being circulated]

RE: Conflict Check for New Client/Matter: [Client/Matter Name]

_____

Please review the following details regarding a potential new litigation matter to ensure there are no conflicts of interest with current or former clients for whom you have provided legal representation and/or possess information protected by attorney/client privilege or ethical rules requiring confidentiality:

- **Potential Client:** [Full Name/Company Name, including any aliases or previous names; address, date of birth]
- **Nature of the Matter:** [Briefly describe the project, case, or scope of work]
- **Known Associated/Opposing Parties:** [List any other individuals, companies, or entities involved, e.g., opposing counsel, partners, major shareholders, etc.]
- **Relevant Dates (Optional):** [e.g., date of the accident/incident, statute of limitations]

Please respond on or before 5:00 p.m. on [date] describing any potential conflicts or confirming that no conflicts exist with respect to this matter.

(WisTech Open. 2026. Example new case and conflict check memorandum by Beth Pless. CC BY 4.0.)

Many law offices create “pre-client files” to document these steps. If the law firm agrees to take on the litigation matter, this information becomes a part of the official client file.

Documenting and Defining the Attorney-Client Relationship

After the potential client has passed the conflicts check, the attorney decides whether to take on the litigation matter. This decision must be made by the attorney and communicated in a letter signed by the attorney (although it is likely a paralegal will draft the actual letter).

If the attorney decides against representation, the potential client should be sent a non-engagement or non-retainer letter. The purpose of this letter is to inform the recipient that the attorney has decided not to accept their legal matter, or the law office is declining to represent them. It must also inform the recipient if there are any important deadlines coming up—especially the statute of limitations. The letter should also explain the consequence of allowing the statute to expire (i.e., “You will be forever barred from making a claim”).

If the attorney decides to take on the litigation matter, an engagement or retainer letter is sent, along with the appropriate fee agreement for the recipient to review, sign, and return. Most engagement letters also advise the recipient to refrain from giving any statements concerning the accident or discussing their claims with anyone outside of the law office. Additionally, the letter should describe the nature and limitations of the representation and highlight important portions of the fee agreement, such as any up-front payment (or advanced fee) required and the hourly rates for the personnel who will be working on the file. Civil litigation attorneys representing plaintiffs typically charge a contingency fee, while attorneys representing defendants typically charge hourly fees.

Setting up the Internal Physical and Electronic Client File

After the fee agreement has been signed by the client and any required advance fee has been paid, the next step is to set up the internal physical and electronic client file. Proper file setup will keep information and documentation relating to the litigation matter organized and accessible, which is key to providing competent and efficient representation.

Most law firms will have an index of client and matter numbers that are assigned to new client files. This internal filing system might include the client’s last name, the year the file was opened, and a numerical or other code identifying the type of legal matter and/or the attorney in charge. Once the new client matter number has been assigned an internal file name/number, the law office’s client index should be updated.

Most law offices still use physical files for each client consisting of a large, accordion-style folder containing multiple file folders (sometimes with different colors) for each type of document or task likely to be involved in the litigation matter. The accordion-style folder is typically labeled with the client's matter number. Typical subfolders include the pre-client file, correspondence, investigation, pleadings, discovery (which may be further divided into types of discovery), motions, legal research, witnesses, expert witnesses, and status memos, with each subfolder labeled accordingly.



Figure 1.1.1: Accordion-style folder and color-coded file folders (Microsoft. (2025). *Accordion-style folder and color-coded file folders* [Large language model prompt]. Copilot. [copilot.microsoft.com])

While law offices still use a lot of paper, most litigation information is created and submitted electronically. In everyday life, digital photos, emails, and other electronic communications, and electronically stored documents are the norm. A growing number of attorneys prefer to receive electronic copies of pleadings and discovery requests from opposing counsel. Similarly, to make files accessible to multiple members of the legal team simultaneously, most law offices scan and save hard copy documents received from others in an electronic format. Many courts, including Wisconsin and the federal courts, require parties to submit pleadings and other court documents electronically. Thus, maintaining well-organized electronic client files is crucial.

The client's electronic case file should be organized the same way as the hard copy files: The same internal client matter number should be assigned to the top-level electronic folder, and electronic subfolders within that top-level folder should be labeled the same as the hard copy color-coded folders. Each electronic subfolder should contain the same documents as the hard copy color-coded folders.

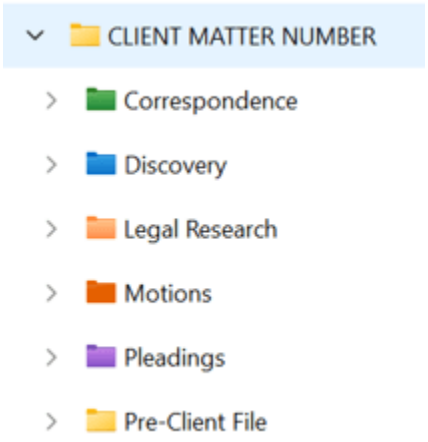


Figure 1.1.2: Graphic showing color-coded file folders in File Explorer on a Windows laptop. (WisTech Open. (2025). *Color-coded file folders in File Explorer on a Windows laptop by Beth Pless* [Infographic]. CC BY 4.0.)

The ability to find documents quickly and easily is essential to providing efficient and effective litigation services. Law office staff must be vigilant about filing and naming documents according to the law office's defined hard copy and electronic systems.

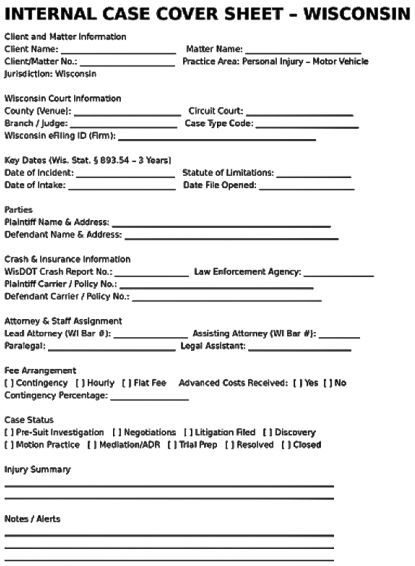
Information Management and Organization Tools

As you might expect, information related to a client's case arrives over time – sometimes slowly and in small pieces, and other

times all at once in overwhelming volume. One of the most important responsibilities of a litigation paralegal is to manage this constant flow of information by ensuring it is properly received, organized, and controlled as it comes into the office. To assist with this process, litigation law firms typically rely on several key documents designed to track and organize case information efficiently.

Here are some of the most commonly used organizational documents:

1. Internal Case Cover Sheet
    - Summarizes the basic facts, parties, claims, injuries, and procedural posture of the case.
    - Placed at the front of the physical file and saved as the first document in an electronic case folder
    - Used during case reviews and legal team meetings



INTERNAL CASE COVER SHEET – WISCONSIN

Client and Matter Information
Client Name: _____ Matter Name: _____
Client/Matter No.: _____ Practice Area: Personal Injury – Motor Vehicle
Jurisdiction: Wisconsin

Wisconsin Court Information
County (Venue): _____ Circuit Court: _____
Branch / Judge: _____ Case Type Code: _____
Wisconsin eFiling ID (Firm): _____

Key Dates (Wis. Stat. § 893.54 – 3 Years)
Date of Incident: _____ Statute of Limitations: _____
Date of Intake: _____ Date File Opened: _____

Parties
Plaintiff Name & Address: _____
Defendant Name & Address: _____

Crash & Insurance Information
WisDOT Crash Report No.: _____ Law Enforcement Agency: _____
Plaintiff Carrier / Policy No.: _____
Defendant Carrier / Policy No.: _____

Attorney & Staff Assignment
Lead Attorney (WI Bar #): _____ Assisting Attorney (WI Bar #): _____
Paralegal: _____ Legal Assistant: _____

Fee Arrangement
[ ] Contingency [ ] Hourly [ ] Flat Fee Advanced Costs Received: [ ] Yes [ ] No
Contingency Percentage: _____

Case Status
[ ] Pre-Suit Investigation [ ] Negotiations [ ] Litigation Filed [ ] Discovery
[ ] Motion Practice [ ] Mediation/ADR [ ] Trial Prep [ ] Resolved [ ] Closed

Injury Summary
_____
_____

Notes / Alerts
_____
_____
_____

Figure 1.1.3: Image of a sample internal case cover sheet (Beth R. Pless)

2. Client Information Sheet: Contains the client's contact information, key dates, and relevant background details.
3. Case Chronology: Running timeline that organizes events in date order to help track the development of facts over time.
4. Document Log/Document Index: Master list identifying all documents received or generated in the case, including dates and sources.

Document Log/Index

Doc. No.	Date Received	Description	Source
1			
2			
3			
4			

Figure 1.1.4: Image of a sample document log/index (Beth R. Pless)

5. Discovery Log: Tool used to record discovery requests, responses, deadlines, deficiencies, and follow-up actions.

Discovery Log/Index

Description	Requester	Date Sent/ Received	Response due date	Status	Action needed

Figure 1.1.5: Image of a sample discovery log/index (Beth R. Pless

6. Evidence Log/Index: Tool used to track receipt, production, source/foundation, and objections

Evidence Log/Index

ID	Description	Source	Date Received	Production (date, to whom)	Status/ objections
E-1					
E-2					
E-3					
E-4					

Figure 1.1.6: Image of a sample evidence log/index (Beth R. Pless)

7. Medical Records Index and Summary: Structured listing and synopsis of medical records, providers, treatment dates, and diagnoses.
8. Witness List and Contact Sheet: Identifies fact witnesses and experts, along with contact information and notes.
9. Task or Tickler List: Deadline-driven checklist used to monitor tasks, filing dates, court deadlines, and follow-up items.

Effective client representation in civil litigation relies as heavily on careful organization and information management as it does on legal knowledge or advocacy skills. Although establishing organized systems may require additional effort at the outset of a case, that investment pays dividends by preventing errors, strengthening legal analysis and arguments, and ensuring compliance with ethical obligations – ultimately saving time and reducing costs over the life of the case. Without structured methods for managing information, even the most capable attorney cannot adequately protect a client's interests.

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1.2: The Case Evaluation

The initial evaluation of a civil litigation matter begins at intake and focuses on assessing the client's factual circumstances, potential liability, likelihood of recovery, and the anticipated costs of pursuing the action. Once the attorney determines that the case is viable and agrees to representation, the legal team conducts a more comprehensive investigation of both the facts and the applicable law. This process includes identifying appropriate causes of action, evaluating potential defenses, and analyzing how the law affects the client's claims. Together, these determinations shape the overall litigation strategy and form the foundation of the theory of the case.

Cause of Action and Defenses

A cause of action is a legal claim that identifies a specific wrong and the legal basis for obtaining judicial relief. Causes of action are defined by substantive law and the claimant must plead and prove, with sufficient evidence, the existence of each required element. Failure to establish even one required element is fatal to the claim as a matter of law. Likewise, failure to properly plead or prove a cause of action may result in dismissal, regardless of how compelling or sympathetic the underlying facts may appear.

Defenses – legal or factual arguments raised by a party to defeat, limit, or avoid liability – are similarly grounded in substantive law. Each defense has required elements that must be timely pleaded and supported by evidence. A party's ability to successfully assert a defense depends not only on identifying the correct legal theory, but also on establishing the factual foundation necessary to support it.

Primary sources of law, as well as pattern jury instructions, are crucial to identifying and understanding the elements of causes of action and potential defenses. However, knowledge of the legal requirements alone is insufficient. Effective advocacy requires careful analysis of the facts to determine whether and how the governing law applies to the specific circumstances of the client's case.

This analytical process typically begins by identifying the required elements of the asserted cause of action, as well as any potentially applicable defenses. After interviewing the client and available witnesses and gathering relevant documents and reports, the legal team evaluates which facts support each element. A proof chart is a practical tool for organizing this analysis, as it allows the legal team to systematically match evidence to legal elements.

Proof Chart

Below is a proof chart completed with facts from the introductory fact scenario.

Table 1.2.1*: Cause of Action: Negligence*

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
1. Duty of due care	Drivers operating vehicles on public roadways have a duty to operate with reasonable care and obey traffic signals and right-of-way rules.	Wisconsin Statutes			

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
2. Breach of duty	Takahashi entered the intersection and collided with a vehicle lawfully turning left, striking the passenger door of Mendoza's vehicle.	Accident scene evidence; vehicle damage location; police report observations; witness interviews.			
3. Causation	Takahashi's entry into the intersection caused his vehicle to strike Mendoza's car, directly resulting in injuries to occupants.	Physical collision; timing and location of impact; accident reconstruction inference; police report observations; witness interviews.			
4. Damages	Riley Barrett sustained severe injuries; Mendoza sustained lesser injuries; medical treatment required.	Medical records; party statements; employment records.			

Table 1.2.2: Defense: Contributory Negligence

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
1. Duty of due care	Mendoza owed a duty to operate the vehicle safely and to yield when turning left unless there was a protected signal.	Traffic laws governing left turns at signalized intersections.			

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
2. Breach of duty	Mendoza entered the intersection while another vehicle was proceeding straight through, resulting in a collision.	Police report; Takahashi's statement; point of impact evidence.			
3. Causation	Mendoza's decision to initiate a left turn contributed to the collision and resulting injuries.	Physical evidence; sequencing of vehicle movements.			

The main purpose of a proof chart is to systematically connect the law to the facts and evidence in a case. It ensures that nothing essential is overlooked before trial, summary judgment, or settlement. As discovery progresses, additional facts, evidentiary considerations, and assessments of how each fact strengthens or weakens the case can be incorporated into the chart, allowing for ongoing refinement of litigation strategy.

The Case Chronology

Once a potential cause of action has been identified, the legal team develops a case chronology to begin organizing and testing the facts of the matter. A chronology arranges events in a logical, time-based sequence, allowing the team to clearly understand how the incident unfolded and how the relevant facts relate to one another. This organizational tool helps transform scattered information into a coherent framework that can be analyzed and relied upon throughout the litigation.

Beyond simple organization, a chronology serves an important analytical function. By mapping facts onto the timeline of events, the legal team can evaluate whether the developing factual record actually satisfies the required elements of the identified claim. Table 1.2.3 presents a sample case chronology for the Mendoza case.

Table 1.2.3: Sample Case Chronology

Date / Time	Event	Source of Information	Notes / Relevance
May 29, xxxx, pre-collision	Intersection characteristics: 4-lane divided roads with flat median; dedicated left-turn lanes on all approaches; traffic signals include green and yellow left-turn arrows.	Police report; roadway description	Controls available signal phases; relevant to timing/visibility and left-turn right-of-way analysis.

Date / Time	Event	Source of Information	Notes / Relevance
May 29, xxxx, moments before collision	Mendoza traveling eastbound on Twin Harbor; intends left turn onto northbound Fox Hollow; stops at red signal.	Police report; Mendoza statement	Establishes maneuver (protected/ permissive turn issue).
May 29, xxxx, moments before collision	Takahashi traveling westbound in far-right lane; stops at red signal.	Police report; Takahashi statement	Lane position and approach documented.
May 29, xxxx, moments before collision	Signal dispute: Mendoza and Takahashi each report they had green when entering.	Police report; officer notes	Core liability issue—requires signal timing and phase analysis.
May 29, xxxx, Collision	Both vehicles enter intersection; Takahashi's Expedition strikes front passenger door of Mendoza's Miata.	Police report; vehicle damage	Impact location consistent with left-turn in progress + westbound through movement; helps reconstruct angles/ speeds.
May 29, xxxx, immediately after collision	Injuries: Riley Barrett (severe); Mendoza (moderate); Takahashi (none reported).	Police/EMS records (anticipated)	Damages profile; identifies primary injury claimant.

The process of creating a proof chart and a case chronology often reveals gaps in proof, inconsistencies in witness accounts, or missing documentation that must be addressed through further investigation or discovery. Together, these documents act as diagnostic tools that highlight both strengths and weaknesses in the client's case at an early stage.

In practice, the determination of a cause of action and the creation of a chronology are not strictly linear steps. An initial assessment is made based on limited information at intake. As additional facts are gathered through client and witness interviews, document collection, and discovery, the litigation strategy is continuously refined.

The Theory of the Case

Another important component in trial advocacy is the theory of the case. The theory of the case is the overarching explanation of why the client should win, expressed as a clear, coherent story that connects the key legal principles to the most persuasive facts into a single unifying framework that guides every stage of the litigation in support of the desired outcome. It shapes how the attorney presents the facts and law, ensuring that every step in the litigation reinforces a simple and compelling message about why the client should prevail.

Table 1.2.4: Cause of Action vs. Theory of the Case

Element	Cause of Action	Theory of the Case
Definition	A legally recognized set of facts that gives a party the right to seek judicial relief against another party.	The story explaining why the party should win
Nature	Legal	Strategic, narrative
Source	Substantive law	Case strategy developed by the legal team
Function	Establishes the legal basis for the claim or defenses	Guides litigation strategy; persuades the judge or jury
Evaluated by	Judge (evidentiary and dispositive motions)	Judge or jury (credibility, coherence, persuasiveness of evidence)
Examples	Negligence, breach of contract, product liability	"The defendant cut corners to maximize profit, causing harm to the plaintiff"

Unlike the cause of action, which establishes the existence of a legal claim and dictates required elements of proof, the theory of the case is the persuasive framework that organizes the facts, evidence, and applicable legal rules into a coherent and convincing explanation of why the client should win. Its purpose is to:

- Identify the legal standards that control the dispute.
- Highlight the most favorable facts that support the client's position.
- Frame the narrative in a way that makes the client's position seem logical, fair, and consistent with the evidence.
- Guide litigation strategy, including pleadings, discovery, witnesses, motions, and trial advocacy.
- Provide the lens through which the judge or jury will be encouraged to view the case.

The theory of the case begins with the client's story and identification of the client's desired outcome. During the preliminary research phase, facts are revealed that help shape the narrative of what happened. These facts are documented in the proof chart and the case chronology. Legal research determines the legal standards that govern the dispute, the elements that must be proven to successfully pursue a cause of action, and the potential defenses.

Below are examples of what an initial analysis of the cause of action and theory of the case might look like for the plaintiffs and the defendant in the Mendoza fact scenario from the beginning of the chapter:

Example 1: Plaintiffs' Perspective (Mendoza and Barrett)

Table 1.2.5: Analysis of the Cause of Action and Theory (Plaintiffs' View)

Cause of Action: Negligence	Supporting facts	Theory of the Case
• Legal duty • Breach of legal duty • Causation • Damages	• Takahashi owed a duty to operate their motor vehicle with due care and in compliance with traffic laws • Takahashi breached that duty by entering the intersection when it was unsafe or against the traffic signal • Takahashi's actions resulted in a collision with Mendoza's vehicle • Mendoza and Barrett were both injured in the collision, and Mendoza's vehicle was damaged	"Haste makes waste" Mendoza, in making a left turn, trusted that other drivers would drive safely and obey the rules of the road. Defendant Takahashi violated that trust and instead engaged in hasty and dangerous behavior that caused a violent collision. That collision catastrophically changed Mendoza's and Barrett's lives.

Example 2: Defendants' Perspective (Takahashi)

Table 1.2.6: Analysis of the Cause of Action and Theory (Defendant's View)

Cause of Action: Negligence	Supporting facts	Theory of the Case
• Legal duty • Breach of legal duty • Causation • Damages Affirmative Defense: • Contributory negligence (same elements as negligence)	• Mendoza owed a duty to operate their motor vehicle with due care and in compliance with traffic laws • Mendoza breached that duty by entering the intersection when it was unsafe or against the traffic signal • Mendoza's actions resulted in a collision with Takahashi's vehicle • Mendoza and Barrett were both injured in the collision, and Mendoza's vehicle was damaged	"Your poor planning is not my emergency" Plaintiff Mendoza made several judgment errors when making a left turn. Takahashi was traveling straight through the intersection and had the right of way. Mendoza turned into Takahashi's path, due to Mendoza's misjudgment of the speed and distance of oncoming traffic, or possibly due to Mendoza's distraction. Mendoza created a hazardous situation, making it impossible for Takahashi to avoid the collision. The tragic result of Mendoza's left-turn error is Mendoza's fault and not Takahashi's.

In this scenario, the cause of action determines whether Mendoza and Barrett have legally sufficient facts to establish a prima facie negligence case. The theory of the case, by contrast, determines how the evidence is presented and how fault is explained to the fact-finder. Even though both sides may agree on many of the underlying facts—location, vehicle positions, and signal control—the outcome at trial may turn on which theory of the case the jury finds more credible, so long as a valid cause of action has been established.

The parties' initial pleadings and early motions represent the first formal articulation of their respective theories of the case. These theories serve as the foundation for discovery strategy by identifying which facts are most significant and which areas require further factual development. Although the theory of the case initially directs discovery efforts, discovery itself plays a critical role in shaping, testing, and refining that theory.

As the parties exchange documents, respond to written discovery, present deposition testimony, and disclose expert opinions, the legal team gains a clearer understanding of which facts support the theory of the case, which facts undermine it, and which themes are likely to resonate most persuasively. Discovery often confirms some assumptions while forcing reconsideration or modification of others. Accordingly, effective advocacy requires continual reassessment of the theory of the case to ensure it remains grounded in admissible evidence rather than speculation or unproven assertions.

Throughout this process, the proof chart serves as a strategic anchor for the legal team. By systematically linking evidence to each required element of the claims and defenses, the proof chart helps maintain focus, identify evidentiary gaps, and ensure that every component of the developing theory of the case can be supported at trial.

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1.3: The Paralegal's Role in Organizing and Managing a Civil Litigation Matter

Paralegals are essential members of a civil litigation team, contributing to the success of legal cases through a variety of important tasks. Their responsibilities often include gathering factual information, interviewing clients and witnesses, organizing and maintaining case files, drafting pleadings and motions, assisting with all aspects of discovery, conducting legal research, communicating with clients, and preparing trial materials. Paralegal responsibilities often change based on where a case is in the litigation process. For example, tasks may differ during the investigation phase, discovery, trial preparation, or post-trial proceedings. By handling these duties, paralegals help attorneys stay focused on litigation strategy and courtroom advocacy.

Litigation Tasks for Paralegals

The following sections provide a list of paralegal tasks, organized by the different stages of the litigation process.

Recurring Responsibilities

- Organizing client files
- Communicating with the client
- Tracking deadlines
- Assisting with scheduling
- Assisting with alternative dispute resolution

Pre-Litigation

- Drafting fee agreements and retainer letters
- Interviewing clients and witnesses
- Locating documents, records, reports, and other items (gathering evidence)
- Evaluating facts, causes of action, and defenses

Commencing Litigation

- Researching substantive and procedural law relating to the case
- Drafting pleadings
- Coordinating service of process
- Reviewing pleadings from opposing parties
- Drafting responses to pleadings from opposing parties

Discovery

- Drafting written discovery
- Reviewing discovery requests received from opposing parties
- Assisting the client in responding to discovery requests
- Organizing, indexing, and summarizing information received in response to discovery requests
- Drafting motions and supporting documents
- Reviewing motions and supporting documents received from opposing parties
- Locating and interviewing expert witnesses

Pre-Trial

- Organizing client materials for trial (including preparing a trial notebook)
- Drafting subpoenas and coordinating service of subpoenas on trial witnesses

- Preparing the client and witnesses for trial
- Drafting proposed jury instructions and verdict forms
- Confirming technology availability in the courtroom

Trial

- Juror investigation
- Preparing trial exhibits
- Assisting the attorney as needed during the trial

Post-Trial

- Drafting proposed judgments
- Preparing documents associated with enforcing judgments
- Researching potential post-trial motions
- Drafting post-trial motions and supporting documents
- Reviewing post-trial motions and supporting documents received from opposing parties
- Drafting notices of appeal and requests for transcripts
- Assisting with research and drafting of appellate briefs

Paralegals play a pivotal role when it comes to drafting and maintaining the proof chart and case chronology, as well as monitoring the theory of the case. As documents are reviewed, interrogatories answered, depositions summarized, and expert materials received, paralegals are often the first to see how the evidence supports – or undermines – the developing narrative.

Throughout discovery, attorneys rely heavily on paralegals to manage and organize incoming evidence, flag inconsistencies, and identify gaps in proof. Discovery frequently confirms some aspects of the theory of the case while weakening others, and paralegals play a critical role in tracking those developments. By maintaining accurate chronologies, document logs, and discovery summaries, paralegals help ensure that the case narrative remains aligned with the evidence that will be admissible at trial.

During this ongoing process, the proof chart is a particularly valuable tool. It allows the legal team to systematically connect evidence to each required element of the claims and defenses, ensuring that no element is overlooked. For paralegals, keeping the proof chart current helps maintain strategic focus, supports attorney decision-making, and promotes efficient preparation for motions, settlement discussions, and trial.

Paralegals in civil litigation need a well-rounded skill set that combines technical expertise, strong organization, and effective communication. They should be proficient in word processing, database management, and spreadsheet software, and possess solid computer skills to handle digital documents and legal research tools. The ability to conduct accurate and efficient legal research – using both online databases and traditional library resources – is essential. Attorneys rely heavily on paralegals to keep case files, legal documents, and information well-organized. Strong time management skills and the ability to prioritize tasks are critical, especially when juggling multiple cases at different stages of litigation. Clear oral and written communication skills are also vital, as paralegals often interact with clients, attorneys, and court personnel. Building positive client relationships requires empathy and professionalism, particularly when working with individuals from diverse backgrounds who may be facing stressful legal challenges. Finally, paralegals must be comfortable working as part of a legal team, supporting attorneys and collaborating effectively with other legal staff. By developing these skills, students preparing for a paralegal career will be well-equipped to contribute meaningfully to a civil litigation practice and grow confidently in the legal profession.

The systems you've been learning – intake forms, cover sheets, logs, chronologies, and structured files – are not busywork; they are what allow the team to competently, ethically, and persuasively represent a client. Effective civil litigation practice depends on rigorous organization, ethical compliance, and strategic evaluation from the moment a potential client contacts a law office through final resolution.

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1.4: Key Takeaways

Opening a Civil Litigation File

- Civil litigation matters must be carefully organized from the initial client contact forward to ensure ethical compliance, efficiency, and effective representation.
- Initial intake and conflicts checking are critical ethical safeguards and should be limited to collecting only the information necessary to identify potential conflicts of interest.
- No attorney-client relationship exists until the attorney affirmatively accepts the case and formally documents that decision through an engagement or retainer agreement.
- Non-engagement letters are essential when representation is declined and they should clearly communicate the decision, identify critical deadlines, and warn of potential consequences.
- Standardized physical and electronic file-management systems are necessary to ensure accessibility, consistency, and compliance with electronic filing requirements.
- Electronic client files should mirror physical file organization, using consistent naming conventions and parallel folder structures.
- Effective litigation practice depends on structured information management, including the use of organizational tools such as case cover sheets, chronologies, logs, indices, and tickler systems.

The Case Evaluation

- Early and ongoing case evaluation focuses on identifying viable causes of action, defenses, potential liability, and the costs of pursuing litigation.
- Causes of action and defenses are defined by substantive law and consist of specific elements that must be pleaded and proven with admissible evidence.
- Proof charts are essential analytical tools that link evidence to each required legal element and help identify strengths, weaknesses, and gaps in proof.
- Case chronologies organize facts in time sequence and serve both organizational and analytical functions throughout litigation.
- The theory of the case provides a persuasive narrative explaining why the client should prevail and guides litigation strategy from pleadings through trial.
- The theory of the case must be continually tested and refined as discovery reveals new facts and evidence.

The Paralegal's Role

- Paralegals play a central role in organizing litigation matters by managing files, discovery, deadlines, and key analytical tools.
- Strong paralegal skills in organization, research, technology, communication, and time management are essential to effective civil litigation practice.

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1.5: Summary

Successful civil litigation begins with careful organization, ethical compliance, and clear documentation at intake. Proper initial intake and conflicts checking protect both the client and the law office, while engagement and non-engagement letters formally define – or decline – the attorney-client relationship. Once representation begins, establishing standardized physical and electronic client files is essential to efficiency, accuracy, and compliance with modern electronic filing requirements.

Effective litigation management depends on structured information management systems. Tools such as case cover sheets, chronologies, document and discovery logs, evidence indices, witness lists, and task tracking systems allow the legal team to control the steady flow of information, meet deadlines, and avoid errors. These organizational tools support strategic decision-making and ensure that facts, documents, and procedural requirements remain accessible and aligned throughout the life of the case.

Case evaluation includes identifying causes of action, defenses, and the development of a persuasive theory of the case. Proof charts and case chronologies are used to connect evidence to required legal elements and to test the strengths and weaknesses of claims as discovery progresses. Ultimately, effective case development follows a clear but flexible progression: a viable cause of action is first identified based on known facts, and a case chronology is then created and continually updated to support and refine that legal theory. Together, these tools bridge the gap between abstract legal claims and a provable litigation narrative, ensuring that legal strategy is firmly grounded in the facts of the case.

Paralegals play a central role in this process by maintaining these tools, managing discovery, monitoring deadlines, performing legal research, drafting documents, and preparing for trial. Their responsibilities vary by litigation stage and require strong technical, organizational, and communication skills, along with professionalism and teamwork.

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Terms with Definitions

Affirmative defenses: Legal arguments raised by a defendant that, if proven, can defeat or reduce the plaintiff's claim, even if the plaintiff's allegations are true.

Case chronology: A detailed, organized timeline that lists all significant events in a case in the order they occurred.

Cause of action: A legally recognized set of facts that gives a party the right to seek judicial relief against another party.

Defense: A legal or factual argument raised to defeat, limit, or avoid liability for a claimant's asserted cause of action, even if the claimant's allegations are otherwise sufficient.

Affirmative defense: Admits the basic facts of the claim but asserts additional facts or legal doctrines that defeat or reduce liability.

Factual defense: Challenges the truth or accuracy of the claimant's factual allegations by disputing that the events occurred as claimed.

Procedural defense: Challenges the legal sufficiency of the lawsuit itself based on failures to comply with procedural rules or jurisdictional requirements.

Prima Facie: A Latin phrase meaning "on its face" – the initial showing of facts sufficient to support a legal claim or defense if those facts are accepted as true.

Proof chart: An internal analytical tool used by the legal team to organize, evaluate, and track evidence in relation to the legal elements of a claim or defense; it systematically breaks down a cause of action or an asserted defense into its required legal elements and aligns each element with the facts, evidence, and anticipated evidentiary issues that support or undermine it.

Theory of the case: The overarching explanation of why the client should win, expressed as a clear, coherent story that connects the key legal principles to the most persuasive facts into a single unifying framework that guides every stage of the litigation in support of the desired outcome.

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2: DRAFTING CIVIL PLEADINGS

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2.3: The Complaint

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2.0: Introduction

Competency: Draft civil pleadings.

Learning Objectives

- Classify the types of parties that can be involved in a Wisconsin civil action
- Determine the amount of time allowed for different types of defendants to respond to a civil Summons and Complaint in Wisconsin
- Produce a civil Summons that complies with Wisconsin statutory requirements
- Determine the jurisdictional allegations that must be included in a Wisconsin civil complaint
- Differentiate the statutory pleading requirements for specific causes of action in Wisconsin
- Produce a civil Complaint that complies with Wisconsin statutory requirements
- Recognize applicable factual defenses available in a Wisconsin civil action
- Produce an Answer to a civil Complaint that complies with Wisconsin statutory requirements
- Explain the paralegal's role in the pleading process.

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

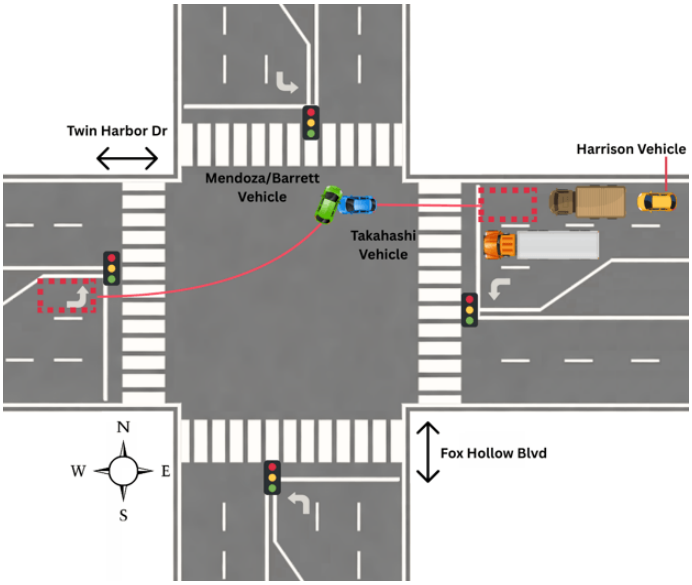

Figure 2.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

After the plaintiff has retained the law office, the attorney has determined the appropriate cause of action, and the paralegal has performed the preliminary investigation, the next step is to formally commence the litigation by filing the required pleadings. In this chapter, we will discuss the pleadings most commonly filed in civil cases, with a particular focus on those frequently used in Wisconsin negligence actions.

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2.1: Parties in a Civil Action

In every civil action, a necessary first step is determining who may properly bring the lawsuit and who may properly be sued. The related concepts of real party in interest, standing to sue, and capacity to sue or be sued ensure that lawsuits are brought only by parties with a legitimate legal interest, against parties who are legally capable of litigation. Failure to satisfy any of these requirements can result in dismissal of the action, delay in proceedings, or the need to amend pleadings, making early analysis essential for effective case management.

The real party in interest is the person who is entitled to the relief sought in the complaint – the person who has personally suffered a compensable loss as a result of another person's wrongful conduct. Closely related is the concept of standing, which requires the injured party to demonstrate a direct and personal stake in the outcome of the controversy. Standing ensures that courts decide actual disputes affecting the parties before them, rather than hypothetical or generalized grievances.

In addition to being a real party in interest with standing to sue, each party must also have the capacity to sue or be sued. With respect to natural persons (human beings), capacity refers to the ability to know and understand the consequences of being involved in civil litigation. Persons under the age of 18, who have been adjudicated as incompetent, or who are deceased lack capacity to sue or be sued. With respect to businesses, only certain types of business entities are granted the status of being "legal persons" under Wisconsin statutes: corporations, limited liability companies, partnerships formed after 2016, and insurance companies. Wis. Stat. § 803.01 (2025); Wis. Stat. § 178.0201 (2025); Wis. Stat. § 632.34 (2025).

If a person who lacks capacity is a real party in interest, an appropriate representative with capacity must sue or be sued on that person's behalf. For example, if a minor is injured in an automobile accident, that person's parent or legal guardian must sue on their behalf. If the defendant is a sole proprietorship, the natural person who is the business owner must be sued, usually doing business as (d/b/a) the name of their business.

Table 2.1.1 shows how these principles impact the people and businesses that may be involved in the Mendoza case described previously.

Table 2.1.1: Mendoza Case Impacts

Person	Real Party in Interest?	Standing to Sue?	Capacity to Sue or be Sued?	Role in Litigation
Ari Mendoza	✅ Yes	✅ Yes	✅ Yes	Plaintiff
Riley Barrett	✅ Yes	✅ Yes	✅ Yes, depending on mental capacity	Plaintiff
Jordan Takahashi	✅ Yes (property damage only)	✅ Yes (property damage only)	✅ Yes	Defendant/Possible Plaintiff or counterclaimant
Quinn Harrison	❌ No	❌ No	✅ Yes	Witness
Martyn Penwald	❌ No	❌ No	✅ Yes	Witness

Person	Real Party in Interest?	Standing to Sue?	Capacity to Sue or be Sued?	Role in Litigation
Takahashi's automobile insurance company	✅ Yes, with respect to insurance coverage	✅ Yes	✅ Yes	Defendant

Only persons who suffered injury or damage are real parties in interest with standing to sue. Witnesses who may have experienced emotional distress or who may have arrived late to work, such as Quinn Harrison and Martyn Penwald, are not real parties in interest because their "harms" are not legally compensable under Wisconsin law.

Next, the parties must be properly identified. Parties should be identified by their full legal names, if possible. However, if only part of the party's name is known or only the party's fictitious name is known, Wisconsin statutes permit parties to be identified by description until their full legal name can be ascertained. Wis. Stat. § 807.12 (2025). For example, if Mendoza does not know the name of Takahashi's automobile insurance company when the Summons and Complaint are filed, Mendoza can identify "ABC Insurance Company" in these pleadings and amend the pleadings once Mendoza learns the actual name of Takahashi's insurer. Similarly, if a business either lacks capacity or is operating under a trade name or fictitious name, the designation "doing business as" or "d/b/a" is used to identify the party: for example, Jack Morton, d/b/a Morty's Pub.

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2.2: The Summons

The summons is the pleading that notifies the defendant that they have been sued in civil court. Its purposes are to inform the defendant that they are being sued, by whom, and in which court; specify what the defendant must do to respond to the lawsuit, including the deadline for doing so; identify the parties who must receive the response from the defendant; and warn the defendant of the consequences of failing to file a proper response within the required time.

The summons begins with a caption. This is the heading found in all pleadings. In Wisconsin, the caption for a summons must identify the:

- Venue (State of Wisconsin and the County of filing)
- Parties, including their full legal names and addresses
- Wisconsin case classification type and the case code
- Title of the pleading (Summons)[1]

For a complete description of content required in the caption, see Wis. Stat. § 802.04(1) (2025).

The case code is a 5-digit number that matches the case classification type as defined by the Wisconsin Court System. A complete listing of case codes and classification types is available on the Wisconsin Circuit Courts site.[2]

Table 2.2.1: Case Classification Codes Table Excerpt from Wisconsin Court System.

Case Type	Classification Type	Case Code
Civil	Products Liability	30100
Civil	Personal Injury - Automobile	30101
Civil	Medical Malpractice - Other	30103
Civil	Medical Malpractice - Ch. 655	30104

Litigation paralegals are often tasked with preparing a caption template containing all of these components for use with all pleadings, motions, discovery, and other official court documents in the case.

The following figure is a sample template for a caption for a Summons in Wisconsin:

STATE OF WISCONSIN CIRCUIT COURT BRANCH _____ _____ COUNTY

PLAINTIFF'S NAME
Street Address
City, State, Zip Code

Plaintiff

vs.

DEFENDANT'S NAME
Street Address
City, State, Zip Code

Defendant.

Case No.: YYYY-xx-######
Case Code #####
Classification type

SUMMONS

Figure 2.2.1: Example Caption of a Summons for a Civil Action Filed in Wisconsin Court (WisTech Open. 2026. Summons example by Beth Pless. CC BY 4.0.]

The next step in drafting the Summons is determining the deadline for the defendant to respond to the Complaint. As you learned previously, Wisconsin Statutes provide two different deadlines for defendants, depending on the identity of the defendant or the type of cause of action pleaded in the Complaint. The deadline that applies to most types of defendants and causes of action is 20 days after service of process has been completed on the defendant. Wis. Stat. § 802.06(1)(a) (2025). However, the following defendants have 45 days to respond:

- The State of Wisconsin, or an agency, officer, employee, or agent of the state
- Insurance companies

Additionally, if the Complaint pleads a tort cause of action (e.g., negligence, strict liability, intentional torts), the defendant has 45 days to respond regardless of the defendant's identity.

The Summons must state the complete street address of the courthouse in the county where the action is filed, along with the mailing address of the plaintiff's attorney. It must also include notice that a default judgment may be entered if the defendant fails to respond. Finally, the Summons must be signed by an attorney or the plaintiff and electronically filed in the appropriate county.

In most cases, the Complaint is attached to the Summons and served on the defendant at the same time. If the Complaint is not attached, the Summons must notify the defendant that a written demand for a copy of the Complaint must be made by the applicable deadline. Failure to do so may result in waiver of the right to object to the allegations in the Complaint and the entry of a default judgment. Additionally, when the sole relief sought is the recovery of money, whether arising from tort or contract, the Summons may include a notation at the bottom stating the amount of money demanded in the Complaint.

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1. Section 801.09 Wis. Stat. (2025) describes the required content for a Summons in Wisconsin. Section 801.095 Wis. Stat. (2025) includes templates for the body of the summons, as well as required content.
2. Wisconsin Circuit Courts website. [www.wicourts.gov/courts/circuit/filing.htm]

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2.3: The Complaint

The complaint is the pleading that states the legal basis for the lawsuit, the plaintiff's factual allegations, and the relief sought. Its purposes are to:

- Establish that the court in which the complaint was filed has jurisdiction over the claim/parties and is the proper venue
- Identify all of the parties in the lawsuit, describing their status and capacity to sue/be sued
- Describe the facts the plaintiff intends to prove that will meet the requirements of the plaintiff's legal claims
- Request the specific relief sought (e.g., monetary damages, injunctive orders, or other remedies) to which the plaintiff may be entitled if the claim is successfully proven

The complaint uses the same caption as the summons; however, Wisconsin permits the omission of the parties' addresses from the caption. The body of the complaint contains the remaining required components: jurisdictional allegations, factual allegations, and prayer for relief. Each allegation must be contained in a numbered paragraph that is limited to a single fact or set of circumstances. see Wis. Stat. § 802.04(2) (2025).

Jurisdictional Allegations

A court can hear a case only when a statute gives it subject matter jurisdiction and when personal jurisdiction over the parties has been properly established. In addition, venue must be appropriate, typically based on where the parties live or where the events underlying the legal claims occurred.

In Wisconsin, each of the first several numbered paragraphs specifically describes one of the parties by full legal name as well as their residency/domicile/contacts with the state, for the purpose of establishing personal jurisdiction. Each paragraph also contains a statement demonstrating that party's capacity to sue/be sued.

Example 2.3.1: Paragraphs Identifying Parties in a Civil Complaint

1. The Plaintiff, [Plaintiff's full legal name], is an adult resident of the State of Wisconsin, [County name] County, whose address is [Street address, City, State, Zip].

2. The Defendant, [Defendant's full legal name], is an adult resident of the State of Wisconsin, [County name] County, whose address is [Street address, City, State, Zip].

3. The Defendant, [Full Legal Name of Business], is a [business form, e.g., limited liability company, corporation], duly formed/incorporated under the laws of [domiciliary state] and licensed to do business within the State of Wisconsin, with a registered agent of [name of registered agent], [doing business as ____ - use only if business is using a trade or other fictitious name], with a principal place of business located at [Street address, City, State, Zip].

4. The Defendant, [Full Legal Name], is an insurance corporation duly formed under the laws of [domiciliary state], licensed to sell and underwrite liability insurance and is engaged in the business of selling and underwriting liability insurance within the State of Wisconsin, with a registered agent of [name of registered agent], with a statutory home address of [Street address, City, State, Zip], and, as Plaintiff is informed and believes, had a policy of liability insurance in full force and effect with [Name of insured party] at all times material hereto for all incidents such as hereinafter described and, thereafter, is a proper party to this action pursuant to the direct action statute of the State of Wisconsin.[1]

After all of the parties have been identified, the next paragraph(s) describe the location of the incident or transaction that forms the basis of the plaintiff's claims as being within the State of Wisconsin and often the specific venue. For example, a paragraph might detail the date, time, and location of an incident/accident, or the date and place a contract between the parties was negotiated and/or signed.

General Factual Allegations

Next, the plaintiff must allege the factual basis for the lawsuit. Wisconsin uses the "notice pleading" standard for complaints; for most causes of action, a complaint only needs to "contain a short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief." Wis. Stat. § 802.02(1)(a) (2025).[2] Detailed factual allegations are not required, and as a matter of strategy, it is generally considered best practice to plead facts in a broad and general manner, providing only the minimal specificity necessary to establish a *prima facie* case.

For example, our fact scenario involves the tort claim of negligence with respect to operating a motor vehicle. The elements of negligence in Wisconsin are: (1) the defendant owed the plaintiff a duty of due care; (2) the defendant breached that duty; (3) a causal connection exists between the defendant's conduct and the plaintiff's injury; and (4) the plaintiff suffered compensable damages. The following allegations would be sufficient to establish a *prima facie* case for negligence:

- Takahashi and Mendoza were each operating a motor vehicle on a public roadway (duty of due care: in Wisconsin, those operating motor vehicles on public roads are required to operate in a reasonably safe manner and comply with traffic laws)
- Takahashi violated Wisconsin traffic laws by failing to operate their vehicle in a reasonably safe manner and in compliance with Wisconsin traffic laws (breach of duty: violation of a safety statute is negligence *per se*).
- As a result of Takahashi's failure to operate their vehicle in a reasonably safe manner and in compliance with Wisconsin traffic laws, Takahashi's vehicle struck Mendoza's vehicle with great force and violence (causation)
- The impact of Takahashi's vehicle against Mendoza's vehicle caused personal injuries to the plaintiffs and damaged Mendoza's vehicle (causation, compensable damages)

Although these facts do not provide any details about the nature of the accident, the traffic violations, or the injuries, these facts, if proven, establish the plaintiffs' entitlement to relief.

Some causes of action require additional or more specific allegations. For example, complaints seeking relief based on fraud or mistake must plead with particularity the specific conduct, statements, or circumstances alleged to constitute the fraud or mistake.

Example 2.3.2: Allegations Relating to Fraud

- On or about June 15, 2024, Plaintiff and Defendant met at Defendant's office located at 123 Main Street, Green Bay, Wisconsin, for the purpose of negotiating the sale of a motor vehicle to Plaintiff.
- During that meeting, Defendant knowingly and intentionally represented to Plaintiff, both verbally and in writing, that the vehicle had never been involved in any prior accident.
- At the time the representation was made, Defendant knew the representation was false, as the vehicle had previously sustained significant damage in a collision.
- Defendant made the misrepresentation with the intent to induce Plaintiff to purchase the vehicle.
- Plaintiff reasonably relied on Defendant's misrepresentation in deciding to purchase the vehicle.
- As a direct and proximate result of Defendant's fraudulent misrepresentation, Plaintiff suffered financial damages, including but not limited to the diminished value of the vehicle and costs of repair.
- Defendant's conduct was willful, knowing, and in reckless disregard of Plaintiff's rights.

Other causes of action requiring specific or detailed allegations in Wisconsin include defamation (libel or slander), money judgment, or statutory claims. See Wis. Stat. § 802.03 (2025).

Multiple and Alternative Claims

In some instances, a single set of facts may give rise to multiple distinct causes of action. Wisconsin statutes allow – but do not require – parties to plead other independent or alternate claims or remedies based on the same transaction or occurrence. Wis. Stat. § 802.02(5)(b) (2025). Principles of efficiency favor pleading multiple or alternative claims within the Complaint, particularly where the available remedies or forms of compensation differ depending on the cause of action asserted.

Multiple Causes of Action

A single set of facts may violate more than one legal duty or support more than one legal theory. Pleading multiple causes of action allows the plaintiff to:

- Maximize potential remedies or damages
- Address uncertainty about which legal theory will be supported by the evidence
- Preserve claims that may be barred if not raised
- Avoid unnecessary additional litigation

Example 2.3.3: Multiple Legal Duties Arising From One Incident

A customer slips and falls on a wet floor in a Wisconsin grocery store, and there were no “wet floor” warning signs posted.

The customer may plead:

- **Violation of Wisconsin’s Safe Place Statute:** for failing to exercise ordinary care to keep the premises as safe as reasonably possible under the circumstances (a higher standard than ordinary negligence)
- **Negligence:** for failing to exercise ordinary care to keep the premises reasonably safe and/or failing to exercise ordinary care to alert customers of the hazard

Although both claims arise from the same incident (the slip and fall at the grocery store), they involve distinct legal theories addressing different aspects of the defendant’s conduct. Pleading both claims allows the plaintiff to present alternative ways in which the store breached its duty of care.

Example 2.3.4: Multiple Legal Claims Arising From One Incident

A homeowner hires a contractor to remodel a kitchen. The contractor is paid in full but performs substandard work and damages the homeowner’s plumbing system.

The homeowner may plead:

- **Breach of Contract:** for failing to perform the work as agreed
- **Negligence:** for careless workmanship that caused property damage

Although both claims arise from the same transaction (the remodeling project), they involve different legal duties. The contract claim focuses on the agreement between the parties, while the negligence claim focuses on the contractor’s duty to perform work with reasonable care.

To plead multiple causes of action, each is set forth in a separate, clearly labeled section. Factual allegations that are common to subsequent causes of action are “incorporated by reference” rather than being repeated. Each section would identify the legal theory and its required elements.

Example 2.3.5: Paragraphs Pleading Multiple Causes of Action

FIRST CAUSE OF ACTION - BREACH OF CONTRACT

6. Plaintiff realleges and incorporates by reference paragraphs 1 through 5.
7. A valid and enforceable contract existed between Plaintiff and Defendant for the remodeling of Plaintiff's kitchen.
8. Under the terms of the contract, Defendant was required to perform the work in a workmanlike manner and in accordance with the agreed specifications.
9. Defendant breached the contract by failing to perform the remodeling work as agreed and by completing the work in a substandard manner.
10. As a direct and proximate result of Defendant's breach of contract, Plaintiff suffered damages, including the cost to repair and correct Defendant's defective work.

SECOND CAUSE OF ACTION - NEGLIGENCE

11. Plaintiff realleges and incorporates by reference paragraphs 1 through 5.
12. Defendant owed Plaintiff a duty to exercise ordinary care in performing the remodeling work.
13. Defendant breached that duty by performing the work in a careless and substandard manner, including causing damage to Plaintiff's plumbing system.
14. Defendant's negligence caused property damage to Plaintiff's home beyond the scope of the contracted work.
15. As a direct and proximate result of Defendant's negligence, Plaintiff suffered damages, including repair costs and related losses.[3]

If appropriate, different causes of action can be pleaded against different parties in the lawsuit. For example, if the first cause of action shown above related to actions by the general contractor, and the second cause of action related to actions by the plumbing subcontractor, the labels would be FIRST CAUSE OF ACTION AGAINST GENERAL CONTRACTOR, INC. – BREACH OF CONTRACT and SECOND CAUSE OF ACTION AGAINST PIPES 'R' US – NEGLIGENCE.

Pleading multiple causes of action promotes efficiency by allowing all related claims between the same parties to be resolved in one lawsuit, rather than forcing multiple actions in different proceedings. Importantly, pleading multiple causes of action does not require the plaintiff to ultimately prevail on all of them. The plaintiff needs only to prove at least one viable claim to obtain relief.

Alternative Causes of Action

Pleading in the alternative allows a party to assert two or more claims or defenses that are inconsistent with one another, even though only one of those claims may ultimately be successful. Wisconsin law expressly permits alternative pleading to ensure that cases are decided on their merits rather than dismissed due to uncertainty at the pleading stage. Wis. Stat. § 802.02(5)(b) (2025).

Unlike pleading multiple causes of action and asserting that all of them may be valid at the same time, pleading in the alternative acknowledges that only one of the claims may succeed, depending on the jury's determination of the facts. It is common when:

- The plaintiff is uncertain which version of the facts will be supported by evidence
- The plaintiff knows the defendant will strongly dispute critical factual allegations
- Different legal theories depend on different factual findings

The key feature of alternative pleading is that the claims are mutually exclusive, meaning that proving one claim would necessarily defeat the other.

For example, a defendant's alleged conduct cannot be both negligent and intentional. However, it would be reasonable for the jury to conclude either, depending on how egregious the jury thinks the conduct is.

Example 2.3.6: Mutually Exclusive Legal Claims Arising From One Incident

A customer is injured during an altercation with a restaurant employee. It is unclear whether the employee acted deliberately, recklessly, or carelessly.

The customer may plead:

- **Battery:** alleging the employee intentionally caused harmful contact that injured the plaintiff
- **Negligence:** alleging the employee failed to act with reasonable care, resulting in injury to the plaintiff

Although both claims arise from the same incident (the altercation), negligence and battery require different mental states and are legally inconsistent. However, because discovery may reveal facts supporting one theory over the other, alternative pleading allows both claims to be asserted initially

Similar to pleading multiple causes of action, each alternative cause of action is set forth in a separate, clearly labeled section. Factual allegations that are common to subsequent causes of action are "incorporated by reference" rather than being repeated.

Each section would identify the legal theory and its required elements.

Example 2.3.7: Paragraphs Pleading Alternative Causes of Action

7. On or about (date), Plaintiff was lawfully present at [Name] restaurant located in [County], Wisconsin, where Defendant was employed.

FIRST ALTERNATIVE CAUSE OF ACTION - BATTERY

8. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.
9. During an interaction with Plaintiff, Defendant intentionally struck, pushed, or otherwise made harmful or offensive physical contact with Plaintiff.
10. Defendant acted deliberately and with intent to cause harmful or offensive contact with Plaintiff.
11. As a direct and proximate result of Defendant's intentional conduct, Plaintiff suffered physical injuries, pain and suffering, medical expenses, and other damages.

SECOND ALTERNATIVE CAUSE OF ACTION - NEGLIGENCE

12. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.
13. At the time of the incident described in this Complaint, Defendant owed Plaintiff a duty to exercise ordinary care.
14. Defendant breached that duty by failing to act as a reasonable person would have acted, creating an unreasonable risk of harm.
15. As a direct and proximate result of Defendant's negligence, Plaintiff suffered physical injuries, pain and suffering, medical expenses, and other damages.[4]

The purpose of alternative pleading is to allow a party to preserve all viable legal theories when the facts are not yet fully known or may be disputed. A party is not required to elect a single theory of recovery at the outset of the case.

Prayer for Relief

The final component of a complaint is the plaintiff's request for relief. In civil cases, courts may grant either monetary damages or equitable relief. Monetary damages are intended to compensate the plaintiff for past and future losses or injuries caused by the defendant's conduct, while equitable relief involves a court order requiring the defendant to act or refrain from acting. The relief available depends on the nature of the claim asserted. In ordinary tort or negligence actions, plaintiffs may recover compensatory damages, which in personal injury cases are further divided into special damages, such as medical expenses or lost wages, and general damages, such as pain and suffering, disfigurement, or disability. Punitive or exemplary damages, which are designed to punish the defendant and deter similar conduct, are generally available only in cases involving intentional torts or particularly egregious behavior.

Wisconsin statutes allow the parties to request several types of relief, including a combination of monetary damages, injunctive relief, or other equitable remedies, depending on the causes of action pled in the Complaint. Similar to pleading alternative causes of action, plaintiffs may also request relief in the alternative. However, Wisconsin statutes specifically disallow plaintiffs from pleading tort causes of action – including intentional torts seeking punitive damages – to specify an amount of money being sought in the Complaint. Wis. Stat. § 802.02(1m)(a) (2025).

Litigating a claim may involve considerable expenses such as filing fees, service of process fees, deposition fees, attorney fees, and expert witness fees, to name a few. A successful plaintiff may be entitled to reimbursement from the defendant of some, but not all, of these costs. Filing fees and reasonable process serving fees are generally compensable; however, other fees (such as expert witness and deposition fees) are subject to limitation. Moreover, attorney fees usually are not compensable. Wis. Stat. § 804.14.(2) (2025). As a result, the prayer for relief is often stated generally.

Example 2.3.8: Prayer for Relief

WHEREFORE, Plaintiff, [Name], demands as follows:

1. Judgment against Defendant in an amount to compensate them fully and fairly for
    - Compensatory damages for injury to the person, including special and general damages.
    - Compensatory damages for damage to personal property
2. Costs and disbursements of this action; and
3. Other and further relief as the Court may deem just and equitable. [5]

Under Wisconsin law, a plaintiff is not required to demand a jury trial within the Complaint itself; however, when counsel anticipates that the case should be tried to a jury, it is considered best practice to include a jury demand in the pleading to avoid any risk of waiver. Pursuant to Wis. Stat. § 805.01 (2025), a party waives the right to a jury trial unless a demand is made in the pleadings or within the time permitted after service of the last pleading. To ensure compliance with this requirement, practitioners typically include the statement, *"Plaintiff demands a trial by jury,"* immediately following the prayer for relief.

After the Complaint is filed, the Circuit Court Clerk assigns a case number (also called a docket number). The case number contains three parts:

1. The year the case was filed
2. A two-character alphabetic code identifying the case type (e.g., CV for civil cases, FA for actions affecting the family, CF for criminal felonies)
3. A 6-digit sequence number assigned by the Clerk of Court

The case number must be included in the caption of every pleading, motion, discovery request or response, and other official court documents in the case.

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1. Example paragraphs identifying parties in a Civil Complaint Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless*. CC BY 4.0).

2. The federal courts also use the "notice pleading" standard for complaints (Legal Information Institute, 2023).

3. Example paragraphs pleading multiple causes of action in a Civil Complaint Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless*. CC BY 4.0).

4. Example paragraphs pleading alternative causes of action in a Civil Complaint Filed in Wisconsin Court (WisTech Open, 2026, *Summons example by Beth Pless*. CC BY 4.0).

5. Example of a prayer for relief from a sample civil complaint filed in Wisconsin court. (WisTech Ope, 2026, *Prayer for relief example by Beth Pless*. CC BY 4.0).

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2.4: The Answer to the Complaint

After the summons and complaint have been filed and properly served, the responsibility for the next step in the litigation process shifts to the defendant. In Wisconsin, a defendant generally has 20 days to respond to a complaint after being served. If the defendant is the state, a state agency/officer, or an insurance company, or if the case involves a tort claim, the response period is extended to 45 days. Wis. Stat. § 802.06(1)(a) (2025)

The most common way for a defendant to respond after being served with a summons and complaint is to file an answer. The answer should use the same caption as the complaint. The body of the answer contains the remaining required components: the defendant's responses to the factual allegations in the complaint, applicable affirmative defenses, legal challenges to the Complaint, compulsory counterclaims, and prayer for relief.

Responses to Plaintiff's Factual Allegations

In Wisconsin, the preferred pleading practice is to use specific denials, meaning the defendant responds to each allegation in the complaint using correspondingly numbered paragraphs. Allowed responses include:

1. Admit all of the allegations contained in the paragraph;
2. Deny all of the allegations contained in the paragraph;
3. Admit/deny a portion of the allegations contained in the paragraph (and specifying what is admitted or denied);
4. Deny the allegation due to insufficient knowledge or information sufficient to form a belief as to the truth of the allegation[1] (Wis. Stat. § 802.02(2) (2025).

STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME
Plaintiff
vs.
DEFENDANT'S NAME
Defendant.

Case No.: YYYY-CV-######
Case Code #####
Classification type

ANSWER

DEFENDANT'S NAME, by their attorneys, [name of law firm], and as and for their Answer to Plaintiff's Complaint hereby admits, denies, and alleges to the Court as follows:

1. As to paragraph 1 of Plaintiff's Complaint, Defendant [admits the same] [denies the same and puts Plaintiff to their proof] [lacks knowledge or information sufficient to form a belief as to the truth of the specific factual allegations contained in said paragraph and does therefore deny the same and puts Plaintiff to their proof].

2. As to paragraph 2 of Plaintiff's Complaint, Defendant [admits the same] [denies the same and puts Plaintiff to their proof] [lacks knowledge or information sufficient to form a belief as to the truth of the specific factual allegations contained in said paragraph and does therefore deny the same and puts Plaintiff to their proof].

Figure 2.4.1: Image of a sample excerpt from an answer to a civil complaint filed in Wisconsin court, showing specific denials. (WisTech Open, 2026. *Specific denials example by Beth Pless* [Image]. CC BY 4.0.)

Sometimes a defendant will use a combination of general and specific denials in the answer, a pleading approach referred to as a qualified denial. Below is what the sample answer above would look like if the defendant used qualified denials instead of specific denials:

Example 2.4.1: Qualified Denials

1. As to paragraph 1 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the specific factual allegations contained in said paragraph and does therefore deny the same and puts Plaintiff to their proof.
2. As to paragraphs 2 and 3 of Plaintiff's Complaint, Defendant admits the same.[2]

Sometimes, a good faith response to a specific allegation requires a partial rather than a full denial. In that circumstance, defendants specify the parts of the allegation that are true and then deny the remainder.

Affirmative Defenses and Legal Challenges to the Complaint

In contrast to denials of factual allegations in the plaintiff's Complaint, affirmative defenses do not challenge the truth of the allegations. Instead, they allege new facts or legal contentions that, if proven, would either defeat the plaintiff's claim entirely or reduce the damages the plaintiff may recover. In Wisconsin, defendants must assert their affirmative defenses in their answer; failing to do so generally results in waiver of those defenses. Wis. Stat. § 802.02(3) (2025) and Wis. Stat. § 802.06(2)(a) (2025)[3]

Some affirmative defenses apply to nearly all civil causes of action. These are often called universal affirmative defenses. Examples of universal affirmative defenses include:

- The statute of limitations for the cause of action has expired
- The court lacks subject-matter jurisdiction
- The court lacks personal jurisdiction over the defendant
- The complaint fails to state a claim for which relief can be granted, even if all of the allegations are presumed to be true

If successful, these defenses result in dismissal of the Complaint.

Example 2.4.2: Sample Answer to a Civil Complaint, Showing Affirmative Defenses

AFFIRMATIVE DEFENSES

5. Upon information and belief, the incident to which reference is made in Plaintiff's Complaint and any and all injuries, losses, or damages flowing therefrom were directly and proximately caused by Plaintiff's own contributory negligence.
6. Upon information and belief, the incident to which reference is made in Plaintiff's Complaint was caused by the negligence of one or more other individuals or entities which are not parties to this action.
7. Upon information and belief, Plaintiff has failed and continues to fail to mitigate their damages.
8. Upon information and belief, Plaintiff suffers from one or more pre-existing conditions which were a cause of a portion of their injuries, losses, and damages.[4]

Other affirmative defenses are specific to the cause of action raised in the complaint. See Wis. Stat. § 802.02(3) (2025). For example, affirmative defenses typically available in tort causes of action include that the plaintiff was also negligent (contributory negligence), the plaintiff failed to take reasonable action to reduce or avoid additional harm (failure to mitigate damages), or a person other than the defendant is responsible for the injury. Contributory negligence is the most common affirmative defense raised in personal injury actions, triggering Wisconsin's comparative negligence statute.

Contributory and Comparative Negligence in Wisconsin

In some cases, the damages suffered are caused by the negligence of more than one party, including the plaintiff. Wisconsin follows a system of comparative negligence, which allocates responsibility for an injury among all parties whose conduct contributed to the harm. Under Wisconsin law, a plaintiff may recover damages only if the plaintiff's own negligence – also referred to as contributory negligence – is not greater than the negligence of the defendant. If the plaintiff's negligence exceeds that of the defendant, recovery is barred. This is sometimes known as the 51% Rule. Wis. Stat. §895.045(1) (2025).

See how applying these rules would impact an injured party who has sued only one defendant:

- **Rule:** Wisconsin's Modified Comparative Negligence (51% Rule)
- **Definition:** Injured party's recovery is reduced in proportion to their share of fault, but only if the injured party's fault does not exceed 50%
- **Effect when the Injured Party is at Fault:** Recovery is allowed up to 49% fault, but barred at 51% or more.
- **Application Example:** If damages are $100,000 and the injured party is 50% at fault, recovery is $50,000. If damages are $100,000 and the injured party is 51% at fault, recovery is $0.

Additionally, when more than one person is found to be causally negligent, the injured party's percentage of contributory negligence is compared separately to the negligence of each other negligent party. An injured party may recover damages from another party only if the injured party's negligence does not exceed that particular party's negligence, and any recovery is reduced in proportion to the injured party's degree of contributory negligence.

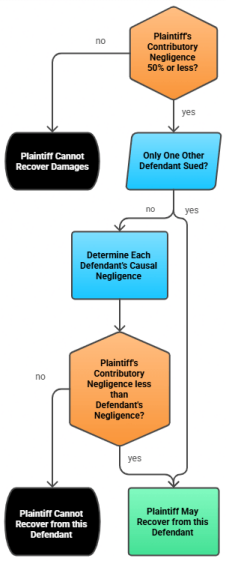

Figure 2.4.2: Negligence and Damages Recovery Flowchart (Accessible format)

Suppose that in the Mendoza case, Mendoza and Barrett both filed a negligence claim against Takahashi, and Takahashi filed a counterclaim against Mendoza and Barrett, and Barrett also filed a claim against Mendoza. Each person's fault in causing the accident would be compared separately against each of the other two people to determine how much each party could recover. Further suppose that the jury determines that Barrett was distracting Mendoza, Mendoza had a flashing yellow left-turn arrow, and Takahashi had a green light, and apportions fault as follows: 10% to Barrett, 35% to Mendoza, and 55% to Takahashi. This is how Wisconsin's comparative negligence statute would apply:

- Barrett is eligible to recover damages, and they would be reduced by 10% (the amount of Barrett's "fault"). Because Mendoza and Takahashi are both more at fault, Barrett could recover 90% of Barrett's claimed damages against Takahashi and Mendoza (though Mendoza's amount of liability would be capped at 35%, the amount of Mendoza's "fault")
- Mendoza is eligible to recover damages, and they would be reduced by 35% (the amount of Mendoza's fault). Mendoza could recover 65% of Mendoza's claimed damages against Takahashi, but could not recover from Barrett because Mendoza is more at fault than Barrett.
- Takahashi is not eligible to recover damages from either Barrett or Mendoza, because Takahashi's "fault" is greater than 50% and is also greater than both Barrett's allocation of fault and Mendoza's.

Counterclaims and Cross-Claims

Defendants are permitted[5] in their Answers to assert counterclaims against the plaintiff or cross-claims against co-defendants. Wis. Stat. § 802.07(1), (3) (2025). For example, a defendant who was injured in the same incident or transaction as the one described in the Complaint may allege that the plaintiff's wrongful act caused damages or harm to the defendant for which the plaintiff should be held responsible. Similarly, if the plaintiff sued multiple defendants, one defendant may allege that the accident described in the plaintiff's complaint was caused by a co-defendant. That defendant may then seek damages for their own injuries or request reimbursement or contribution from the co-defendant for any judgment entered against them.

Counterclaims and cross-claims are included as separate sections in the defendant's Answer, with numbered paragraphs that detail the factual allegations supporting them. Pleading requirements for counterclaims and cross-claims are identical to those for complaints, in that the defendant must allege facts sufficient to establish a *prima facie* case supporting the defendant's claim for relief. Any damages the defendant seeks for harm they suffered are requested in the prayer for relief at the end of the Answer.

Example 2.4.3: Sample Answers to a Civil Complaint, Showing Counterclaim and Cross-Claim

DEFENDANT'S COUNTERCLAIM AGAINST PLAINTIFF, [NAME]

9. The allegations, admissions, and denials contained in Paragraphs 1-8 are hereby realleged and incorporated herein.
10. [Factual allegation regarding element #1 of Defendant's claim against Plaintiff.]
11. [Factual allegation regarding element #2 of Defendant's claim against Plaintiff.]

DEFENDANT'S CROSS-CLAIM AGAINST DEFENDANT, [NAME]

12. The allegations, admissions, and denials contained in Paragraphs 1-8 are hereby realleged and incorporated herein.
13. [Factual allegation regarding element #1 of Defendant's claim against Co-Defendant.]
14. [Factual allegation regarding element #2 of Defendant's claim against Co-Defendant.][6]

Parties served with a counterclaim or cross-claim must file an answer to that pleading, or risk being in default. In Wisconsin, the same deadlines apply to these responses as to answers to the original complaint. Wis. Stat. § 802.06(1)(a) (2025).

Prayer for Relief

This final component of the answer is the defendant's specific request that the court take some action based on the contentions in the answer. Nearly every answer includes a request that the court dismiss the complaint and award the defendant the costs allowable under statute.

Example 2.4.4: Certificate of Mailing

I certify that on mm/dd/yyyy, I served the within document, pursuant to Wis. Rules of Civil Procedure:

☐ Rule 801.14(2) - mailing/hand delivery/facsimile

☐ Rule 801.18 - electronic filing

☐ E-mail

By: [Name and signature of signor]

To: [Name of Plaintiff or Plaintiff's attorney][7]

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1. A party is only allowed to claim lack of knowledge or information if the party honestly lacks firsthand knowledge of the true facts, or cannot easily obtain the information regarding the truth or falsity of the allegation.
2. Sample excerpt from an answer to a civil complaint filed in Wisconsin court, showing qualified denials. (WisTech Open, 2026. *Qualified denials example by Beth Pless.* CC BY 4.0.)
3. This statute lists 10 defenses that alternatively can be raised by a motion filed before an Answer is filed.
4. Sample excerpt from an answer to a civil complaint filed in Wisconsin court, showing affirmative defenses. (WisTech Open, 2026. *Affirmative defenses example by Beth Pless.* CC BY 4.0.
5. Wisconsin is a permissive counterclaim state; however, the principle of *res judicata* may preclude a defendant who could have raised a counterclaim in a prior action from bringing a subsequent action on the same claim. *ABCG Enterprises v. First*

Bank Southeast, 184 Wis. 2d 465, 515 N.W.2d 904 (1994).

6. Sample excerpt from an answer to a civil complaint filed in Wisconsin court, showing counterclaim and cross-claim. (WisTech Open, 2026. *Counterclaim and cross-claim example by Beth Pless.* CC BY 4.0.)

7. Sample certificate of mailing (WisTech Open, 2026. *Mailing example by Beth Pless*. CC BY 4.0).

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2.5: Third-Party Practice

If a defendant wants to claim that someone who is not named in the plaintiff's complaint is responsible for the plaintiff's damages, the defendant must file a third-party complaint. Similarly, a plaintiff against whom the defendant has asserted a counterclaim may also file a third-party complaint to bring in a new party to the lawsuit. Wis. Stat. § 803.05 (2025).

Unlike a counterclaim or cross-claim, a third-party complaint is a separate pleading. It uses the same caption, but the defendant is redesignated as the "defendant and third-party plaintiff," and the newly added party is labeled the "third-party defendant." In most respects, a third-party complaint resembles the complaint and includes similar factual and jurisdictional allegations. The third-party complaint must be served on the third-party defendant, along with a summons, in the same manner required for service of process of the original complaint.

STATE OF WISCONSIN CIRCUIT COURT BRANCH _____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/
Third-Party Plaintiff

vs.

THIRD-PARTY DEFENDANT'S NAME

Third-Party Defendant

Case No.: YYYY-CV-######
Case Code #####
Classification type

THIRD-PARTY COMPLAINT

NOW COMES the Defendant/Third Party Plaintiff, [defendant's name] in the above entitled action, by their attorneys, [name of law firm], and as for their Third-Party Complaint against the Third-Party Defendant alleges and shows to the Court as follows:

Figure 2.5.1: Image of a sample excerpt from a third-party complaint filed in Wisconsin court, showing counterclaim and cross-claim. (WisTech Open, 2026. *Counterclaim and cross-claim example by Beth Pless*. CC BY 4.0.)

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2.6: The Paralegal's Role in Civil Pleadings

Litigation paralegals frequently prepare initial drafts of pleadings in close collaboration with the supervising attorney. As with all legal documents, these drafts must be reviewed, approved, and signed by the attorney before filing with the court. Many litigation firms maintain sample pleadings or template forms to guide this process, and litigation form books—such as *Wisconsin Pleading and Practice*—are also valuable resources.

Paralegals are often responsible for drafting the case caption in accordance with the court's required components and classification codes. This may include researching and confirming the proper names and addresses of the parties. Afterward, the paralegal typically drafts the jurisdictional statements and factual allegations based on information gathered during the investigation of the claim. Paralegals may also be asked to conduct additional legal or factual research to assist in drafting or responding to pleadings. The attorney will usually provide direction regarding which categories of damages should be requested in the prayer for relief.

When assisting with the drafting of pleadings, paralegals should recognize that the claims and defenses alleged in the pleadings will ultimately shape the evidence presented at trial, the special-verdict questions submitted to the jury, and the jury instructions given by the court. For that reason, attorneys often review applicable jury instructions early in the litigation process. The language of the *Wisconsin Civil Jury Instructions* can help identify the elements that must be proven for a claim or defense and provide a useful checklist for evaluating whether the pleadings adequately allege those elements. The jury instructions may also help attorneys and paralegals identify the facts that must be developed during discovery and the issues that will later need to be addressed through witness testimony and documentary evidence at trial.

Paralegals also assist by identifying factual uncertainties early in the case and flagging inconsistent theories that may require alternative pleading. If the attorney determines that alternative claims are required, the paralegal ensures those claims are clearly labeled and properly organized in the pleading.

Once the pleadings are finalized, paralegals are commonly responsible for filing or e-filing them with the court, arranging for a process server, and supplying authenticated copies for service of process. They must also track deadlines for service and for responses to the pleadings, ensuring these dates—and related reminders—are added to the firm's calendar. Copies of pleadings filed and served on other parties, as well as pleadings received from other parties and any corresponding responses, are maintained in the client's file within the pleadings sub-file.

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2.7: Key Takeaways

Parties in a Civil Action

- Civil pleadings formally begin a civil action, define the issues for the court, notify the parties, and outline the claims, defenses, and relief requested.
- Proper identification of parties requires careful analysis of real party in interest, standing to sue, and capacity to sue or be sued, all of which are essential to maintaining a valid civil action.
- Parties must be properly identified using their full, true legal name when known; fictitious names can be used when the true name is not known at the time of filing.

The Summons and the Complaint

- The summons tells the defendant they are being sued, identifies the court and parties, explains the steps and deadlines for responding, and warns of the consequences of failing to appear.
- The Summons must strictly comply with statutory content requirements, including response deadlines and warning language regarding default judgment.
- The Complaint establishes jurisdiction, identifies the parties, alleges the facts, and states the requested relief.
- The components of a complaint are the caption, jurisdictional allegations, factual allegations, and prayer for relief.
- The Complaint sets forth jurisdictional allegations, factual allegations, and the relief sought, and is governed by Wisconsin's notice-pleading standard, which requires only a short and plain statement of the claim.
- Certain causes of action, such as fraud, defamation, and statutory claims, require heightened or specific pleading beyond general notice pleading.
- Wisconsin law permits—but does not require—parties to plead multiple causes of action arising from the same transaction or occurrence to promote efficiency and preserve remedies.
- Alternative pleading allows parties to assert inconsistent legal theories when the facts are uncertain, without requiring early election of a single theory of recovery.
- The prayer for relief specifies the remedies sought and may include monetary or equitable relief, subject to statutory limits on pleading damage amounts in tort actions.

The Answer to the Complaint

- Statutes set deadlines for responding to a properly served summons and complaint.
- Defendants respond to complaints by filing an Answer, which must contain admissions or denials, affirmative defenses, compulsory counterclaims, and any requested relief.
- Universal and claim-specific affirmative defenses play a critical role in limiting liability. These include statutes of limitation, jurisdictional issues, contributory negligence, assumption of risk, and failure to mitigate damages.
- The components of an answer are the caption, responses to the factual allegations in the complaint, affirmative defenses, and prayer for relief.
- Wisconsin's comparative negligence system limits recovery based on the plaintiff's percentage of fault and compares negligence separately against each defendant.
- Counterclaims and cross-claims allow additional claims to be brought into the action so related disputes may be resolved in a single proceeding.
- Parties against whom counterclaims and cross-claims are pled must respond within statutorily required deadlines.

Third-Party Practice

- If the defendant believes that someone who is not named in the plaintiff's complaint is responsible for plaintiff's damages, the defendant must file a third-party complaint.
- Third-party complaints allow additional claims and parties to be brought into the action so related disputes may be resolved in a single proceeding.
- Parties served with third-party complaints must respond within statutorily required deadlines.

The Paralegal's Role in Civil Pleadings

- Litigation paralegal responsibilities include drafting captions and allegations; researching parties, facts, and procedural rules; preparing initial drafts of pleadings; coordinating filing/e-filing and service of process; and maintaining deadlines and the pleadings sub-file.
- Pleadings must comply with court-specific rules regarding form, authentication, and delivery; errors can lead to delays, dismissal, or default.

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2.8: Summary

Before commencing a lawsuit, the legal team must confirm that each party is a real party in interest who possesses standing and capacity to sue or be sued. These requirements are an important gatekeeping function in Wisconsin civil procedure. Properly identifying the real party in interest, confirming standing, and verifying capacity protects the integrity of the judicial process, promotes efficiency, and safeguards the rights of all parties involved. For paralegals and practitioners alike, careful attention to these issues at the pleading stage is critical to avoiding procedural missteps that can jeopardize an otherwise valid claim.

All pleadings serve the same foundational purposes. First, they provide formal notice to the opposing party and to the court, identifying the nature of the dispute and the legal framework under which relief is sought. Second, they organize the issues to be resolved in the litigation by outlining the parties' respective claims, defenses, and factual assertions. Third, they create the structural foundation for the remainder of the case, guiding the scope of discovery, shaping motion practice, and ultimately framing the matters that will be decided at trial or resolved through settlement. Wisconsin uses a notice-pleading standard that usually requires only a general and clear statement of facts to support each cause of action or defense, though certain causes of action require specific pleading.

Paralegals need to understand how to properly draft a Summons and Complaint, including required statutory content, service and response deadlines, and drafting considerations under Wisconsin law. Well-drafted Complaints strategically identify and organize multiple or alternative causes of action when needed. Finally, the prayer for relief should include a jury demand and must describe the desired remedies, being careful not to run afoul of Wisconsin's prohibition of pleading specific monetary amounts in most causes of action.

A properly drafted Answer includes proper responses to all of the factual allegations contained in the Complaint and affirmative defenses. Well-drafted Answers also contain counterclaims and cross-claims, fully supported by necessary factual allegations, where appropriate. Parties against whom counterclaims and cross-claims are pled must respond within statutorily required deadlines, similar to those for responding to a Complaint.

Additional parties may be brought into a lawsuit by any other party when they may be responsible for all or part of the claimed damages. A third-party complaint must be drafted and served upon those additional parties, who must respond within statutorily required deadlines.

Litigation paralegals play a vital role in preparing captions and drafting pleadings, as well as managing filing, service, and statutory deadlines. Mastery of Wisconsin's pleading rules and practices enables paralegals to support efficient case management and helps ensure that civil actions are resolved on their merits rather than through avoidable procedural errors.

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Terms with Definitions

Affirmative defense: Facts or legal contentions alleged in a defendant's answer that, if proven, defeat the plaintiff's claim or reduce the damages the plaintiff may recover.

Allegation: A statement or assertion that someone claims to be true but is not yet proven.

Answer: A pleading that contests some or all of the facts alleged in the complaint.

Authentication: The court's process of verifying that a pleading (such as a complaint, answer, or motion) is genuine, properly executed, and filed by an authorized person.

Capacity to sue: A party's legal ability to bring or defend a lawsuit, based on the party's legal status – such as age, mental competence, or organizational form – rather than the merits of the claim itself.

Caption: The heading found in all pleadings that identifies the court/jurisdiction, venue, the parties, the case/docket number, and the title of the pleading.

Compensatory damages: The award of money to compensate a civil litigant for the loss or injury suffered as the result of a defendant's conduct.

Complaint: The pleading that states the legal basis for the lawsuit, the plaintiff's factual allegations, and the relief sought.

Contribution: A claim by one defendant seeking to recover from a co-defendant a fair share of any liability owed to the plaintiff.

Contributory negligence: An affirmative defense in which the defendant alleges that the plaintiff's own negligent conduct was a cause of the plaintiff's injuries and damages.

Counterclaim: A defendant's claim against the plaintiff in the defendant's answer to the complaint.

Cross-claim: A defendant's claim against a co-defendant, related to the plaintiff's claims, in the defendant's answer to the complaint.

Default judgment: A court order entered against a defendant who fails to respond or otherwise participate in a lawsuit within the time required by law; the court may grant the plaintiff the relief requested in the complaint without a trial.

Docket number: The unique identifying number assigned by a court to a specific case when it is filed.

Equitable relief: A court order requiring a party to do something or stop doing something.

Fictitious name: An assumed or trade name under which a person or business operates or is identified in a lawsuit, rather than the party's true legal name.

Filing: Presenting a pleading, motion, or other legal document to the clerk of court for inclusion in the official case file.

General damages: Compensatory damages for non-monetary losses, such as pain and suffering, disfigurement, or disability, which may be awarded in a personal injury tort claim.

Motion: A formal written or oral request asking the court to issue an order or ruling on a specific issue before, during, or after trial.

Notice pleading: A style of pleading that requires the complaint to include only a short, plain statement of the claim showing that the plaintiff is entitled to relief.

Pleadings: Formal written documents filed with a court by the parties in a civil lawsuit setting out each party's claims, defenses, legal positions, and requested relief.

Prayer for Relief: A specific request in a pleading that the court take some action based on the contentions in the pleading.

Punitive or exemplary damages: An additional award of damages designed to punish the defendant or deter others from engaging in similar conduct, typically available only in cases involving intentional torts or extremely offensive acts.

Qualified denial: A type of answer in which a defendant uses a combination of general and specific denials when responding to the allegations in the complaint.

Real party in interest: The person or entity who possesses the substantive legal right being asserted in the action and who stands to benefit from the relief sought.

Service of process: The formal procedure used to notify a defendant (or other party) that a civil lawsuit has been filed against them.

Special damages: Compensatory damages for actual out-of-pocket expenses, such as medical bills or lost earnings, which may be awarded in a personal injury tort claim.

Specific denial: A type of answer in which the defendant responds to each allegation in the complaint using correspondingly numbered paragraphs.

Standing to sue: A party's legal right to bring an action by demonstrating a direct, personal stake in the outcome of the dispute, based on an actual or threatened injury that can be addressed by the court.

Summons: The civil pleading that notifies the defendant that they have been sued in civil court.

Third-party complaint: A pleading filed by a party to an existing lawsuit that brings a new party into the action by alleging the new party may be liable for all or part of the claim asserted against the filing party.

Third-party practice: A procedural mechanism that allows a party to bring a new person into a lawsuit by asserting a claim that the third party may be liable for all or part of the claim asserted against the original party.

Universal affirmative defense: An affirmative defense that applies broadly to nearly all civil causes of action.

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3: CIVIL DISCOVERY - INTERROGATORIES

3.0: Introduction

3.1: Utilizing Written Interrogatories in a Civil Action

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3.0: Introduction

Competency: Draft documents relating to interrogatories for a civil cause of action.

Learning Objectives

- Discern the types of information that can be obtained through written interrogatories
- Prioritize information that is most effectively obtained through a limited number of written interrogatories
- Describe best practices for drafting effective written interrogatories
- Anticipate potential objections to written interrogatories
- Produce a set of written interrogatories that effectively seeks relevant information and complies with Wisconsin statutory requirements
- Summarize the process for responding to written interrogatories
- Explain the paralegal's role with respect to interrogatories (Organize and control information)

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

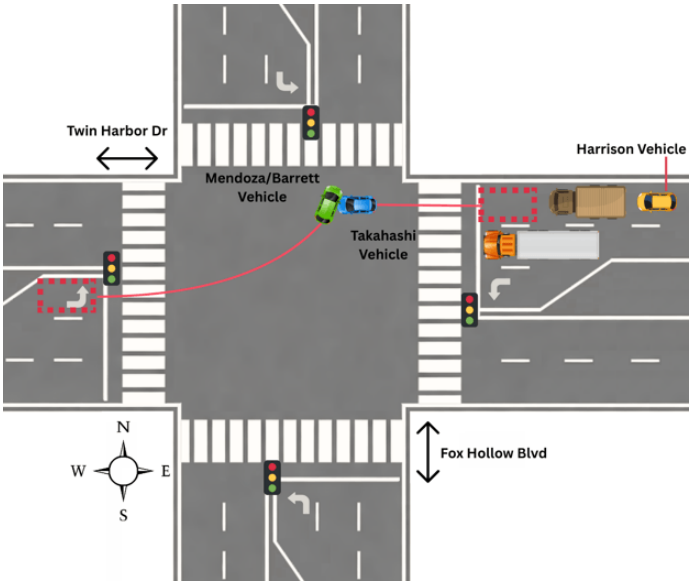

Figure 3.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

After the summons, complaint, answer, and other initial pleadings and motions have been filed, the discovery phase begins. Contrary to dramatic portrayals in movies and television, trials rarely involve last-minute revelations or "smoking gun" evidence. Civil litigation is structured to eliminate such surprises; discovery rules are designed to ensure that cases are resolved based on the facts and the applicable law, not on an attorney's ability to withhold information or ambush opposing counsel with unexpected witnesses. Engaging in such tactics could even violate the *Rules of Professional Conduct*.

Discovery is governed by Wis. Stat. §804.01 (2025). When conducted effectively, discovery not only uncovers the facts underlying the dispute but also shapes the overall strategy and progression of the case by serving several key functions:

1. Identifying and clarifying the relevant facts
2. Preserving testimony for later use, including at trial
3. Narrowing the factual and legal issues that must ultimately be resolved
4. Assessing the strengths and weaknesses of the case to determine whether trial or settlement is the more advisable course

In practice, each discovery tool contributes differently to these objectives. Additionally, some tools are more effective than others at accomplishing particular functions.

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3.1: Utilizing Written Interrogatories in a Civil Action

In Wisconsin, attorneys may use formal discovery tools in any sequence. Most attorneys follow the sequence below.

1. Interrogatories
2. Requests for production
3. Depositions
4. Requests for physical or mental examinations
5. Requests for admission

This sequence reflects the type of information each discovery tool is best suited to obtain and offers several practical advantages. Interrogatories typically elicit foundational information about the facts, circumstances, and witnesses.

Interrogatories



Figure 3.1.1: Interrogatories. (OpenAI. 2026. *Interrogatories* [Large language model prompt]. ChatGPT).

Interrogatories are a form of written discovery that can only be sent or received by parties to the lawsuit. They ask a series of questions that the receiving party is required to answer in writing and under oath. Interrogatories are among the least expensive discovery tools and do not require travel or court reporters. As a result, they provide an efficient way to gather factual information. In addition, interrogatories that ask about legal contentions require the recipient to explain the factual basis for their claims or defenses, helping narrow and clarify disputed issues.

Interrogatories are especially useful for:

- Identifying individuals likely to have discoverable knowledge of the other party's claims or defenses
- Identifying documents related to the other party's claims or defenses
- Establishing facts regarding the other party's claims or defenses
- Ascertaining the legal contentions the other party has raised or intends to raise

Plaintiffs may serve interrogatories simultaneously with the summons and complaint or at any time after service has been completed. Defendants may serve interrogatories on the plaintiff at any time after the summons and complaint have been filed, and on any other party after the party has been served. Wis. Stat. § 804.08(1) (2025).

Limits on Interrogatories

The scope of discovery permitted is broad. Discovery is not limited to potentially admissible evidence; Wisconsin statutes permit inquiry into all non-privileged matters that are relevant to any party's claim or defense and proportional to the needs of the case, regardless of whether the information sought will be admissible at trial. Wis. Stat. § 804.01(2)(a) (2025). Although it may be tempting to draft interrogatories that explore every conceivable issue even remotely connected to the case, and to include lengthy lists of details sought, legal practitioners must remain mindful of the limitations imposed on interrogatories by Wisconsin law.

Wisconsin limits the number of interrogatories that can be served on an opposing party to 25 interrogatories, including subparts. Wis. Stat. § 804.08(1)(am) (2025).[1] Thus, it is important to tailor interrogatories to seek only that information that is most effectively obtained through interrogatories, and that is needed early in the discovery process.

Additionally, Wisconsin law prohibits interrogatories that seek information protected by privilege. Wis. Stat. § 804.01(2)(a) and (c) (2025). The content of privileged communications recognized in Wisconsin statutes, constitutions, and Supreme Court Rules is not discoverable. Wis. Stat. § 905.01 (2025). As you learned previously, communications with clients, health care providers, clergy, and between spouses are protected; chapter 905 of the Wisconsin Statutes lists other privileges that are similarly not subject to discovery except in limited circumstances. Wis. Stat. Ch. 905 (2025).

1. Some circuit courts imposed their own limitations on the number of interrogatories in their local rules prior to the enactment of this statute in 2017. It is somewhat unclear whether limitations in the local rules override the statutory limitation, or whether a "court order" allows additional interrogatories or further restricts the number.

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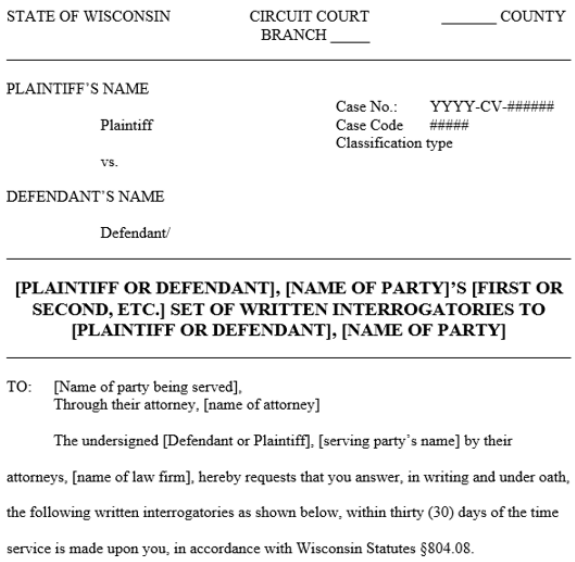
3.2: Drafting Written Interrogatories

The ultimate objective of an interrogatory is to ask an opposing party a question that reveals admissible evidence or leads to other evidence that may be admissible. Although there is no statutorily required form for interrogatories, the form and basic content are somewhat standardized in practice.

Interrogatories begin with the official caption used in the lawsuit. The title of the interrogatories should include the name and party designation of the person requesting them, as well as the name and party designation of the person on whom they are served. The first paragraph further identifies the method of service (typically on the party's attorney) and the statute authorizing the interrogatories.



STATE OF WISCONSIN CIRCUIT COURT BRANCH _____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

[PLAINTIFF OR DEFENDANT], [NAME OF PARTY]'S [FIRST OR SECOND, ETC.] SET OF WRITTEN INTERROGATORIES TO [PLAINTIFF OR DEFENDANT], [NAME OF PARTY]

TO: [Name of party being served],
Through their attorney, [name of attorney]

The undersigned [Defendant or Plaintiff], [serving party's name] by their attorneys, [name of law firm], hereby requests that you answer, in writing and under oath, the following written interrogatories as shown below, within thirty (30) days of the time service is made upon you, in accordance with Wisconsin Statutes §804.08.

Figure 3.2.1: Example Caption of a set of Interrogatories for a Civil Action Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless*. CC BY 4.0).

Although not required by statute, best practice dictates the inclusion of instructions and relevant definitions.

Drafting Interrogatory Instructions

The purpose of the instructions section is to inform the responding party of the statutory requirements and expectations for answering interrogatories. Typical instructions borrow language from Wis. Stat. § 804.08(1)(b) (2025), as well as additional requirements supported by Wisconsin law.

Example 3.2.1: Instructions For a Set of Interrogatories

INSTRUCTIONS

1. Answer each interrogatory separately and fully in writing, under oath, unless it is objected to, in which event the reasons for the objection must be set forth fully in lieu of the answer.
2. An evasive or incomplete answer is deemed to be a failure to answer under Section 804.12 of the Wisconsin Statutes.
3. You are under a continuing duty to seasonably supplement your response in accordance with Section 804.10(5), Wis. Stats., with respect to any question directly addressed to the identity and location of each person expected to be called as an expert witness at trial and the subject matter on which the expert is expected to testify. Furthermore, you are under a similar duty to correct any incorrect response when you later learn that it is incorrect.[1]

Another important topic often included in the instructions is a description of the procedures for objecting to interrogatories.

Below is an example:

Example 3.2.2: Continued Instructions For a Set of Interrogatories

4. If you object to, or otherwise decline to answer, any portion of an interrogatory, provide all the information called for in that portion of the interrogatory to which you do not object or which you do not decline to answer.
5. If you object to any interrogatory or any portion of an interrogatory, or withhold any information on the ground that the interrogatory requests information that is privileged or false within the work-product doctrine, state the nature of the privilege or doctrine you claim protects the information requested. If a document is involved, identify it and identify all persons known to you who have seen the document. If an oral communication is involved, identify it and identify all persons known to you to whom the substance of the oral communication has been disclosed. Finally, state any other facts you rely on to establish that the privilege has been properly claimed.
6. If you object to any interrogatory or any portion of an interrogatory on the grounds of annoyance, embarrassment, oppression, or undue burden or expenses, please set forth all the facts upon which you rely as the basis for your objection.[2]

Lastly, some attorneys also like to include an instruction explicitly directing that the definitions section applies to all interrogatories.

Drafting Interrogatory Definitions

The purpose of a definitions section in interrogatories is twofold. First, it reduces the need for lengthy and repetitive questions by establishing common terms that encompass details such as time, place, persons, and events. Second, it facilitates more complete responses by ensuring that each interrogatory, through the defined terms, automatically elicits all necessary information without the need for multiple questions or subparts seeking the same details.

As a best practice, each interrogatory should be drafted so that it can stand on its own, without requiring reference to other questions for context, explanation, or clarification. This includes clearly framing each request with appropriate specificity as to dates, locations, and subject matter. However, including the background information in each question can result in lengthy, cumbersome interrogatories that are difficult to read and understand. Moreover, without clear definitions and self-contained questions, the responding party may interpret the interrogatory narrowly or inconsistently, increasing the likelihood of incomplete, evasive, or objection-laden responses and leading to avoidable disputes, unnecessary supplemental discovery, or court intervention.

Careful review of the client's file – particularly the pleadings, proof chart, and case chronology – can assist in identifying words, phrases, or descriptions that are likely to recur throughout the interrogatories, making them well-suited for inclusion in a centralized definitions section. For example, in personal injury cases, it can be helpful to define the word "incident" to include the date, time, location, and basic mechanism of injury. Similarly, in automobile accident cases, each party's vehicle can be defined by make, model, year, and VIN. The box below contains examples of how such words might be defined.

Example 3.2.3: Automobile Accident Case Definitions

Document(s): "Document" is used in the broadest possible sense and refers to any form of communication or data storage, however produced or reproduced, regardless of whether it now exists. This definition includes, but is not limited to, any written, printed, typed, or graphic matter of any kind or nature, now in the possession, custody, or control of a party to this action, or in the possession, custody, or control of the present or former officers, agents, representatives, employees of a party, or any and all persons acting in its or the party's behalf, including documents at any time in the possession, custody, or control of such individuals or entities, or known by the responding party to exist.

Incident: The collision that occurred at the intersection of [name of street] and [name of street] between [name of driver 1] and [name of driver 2], on or about [Month, Day, Year] at approximately [time a.m./p.m.]

Plaintiff's vehicle: The motor vehicle operated by [name of plaintiff] at the time of the incident, specifically, a [year, make, model] with a VIN [vehicle identification number, if known]

You/Your: The defendants, their present and former members, officers, agents, employees, and all other persons acting or purporting to act on their behalf, including all present or former members, officers, agents, employees, and all other persons exercising or purporting to exercise discretion, making policy, and making decisions

By clearly defining key terms, legal practitioners can streamline interrogatories while minimizing the risk of objections based on ambiguity, vagueness, or overbreadth, thereby improving both clarity and efficiency.

Because Wisconsin law limits the number of interrogatories, carefully drafted definitions that specify the details required in a response are especially useful. By incorporating these requirements through defined terms, practitioners can avoid writing additional interrogatories or unnecessary subparts merely to request information such as dates, locations, identities, or descriptions. A commonly used definition of this type is the definition of the term "identify," shown in the box below.

Example 3.2.4: Identify Definitions

Identify - When used in reference to a document, it means to state:

- The date and description of the document
- The document's present location and the name and address of the custodian; the name and address of the person who drafted, prepared, and signed the document; and the name and address of the preparer's current employer
- The identity of each person to whom it was addressed or distributed
- The nature and substance of the document with sufficient particularity to enable it to be identified
- Any other descriptive information necessary to adequately describe the document

Identify - When used in reference to a communication that is not a document, it means to state:

- The date of the communication
- The place where the communication occurred
- The type of communication (e.g., telephone conversation, meeting)
- The content of the communication
- The name and address of all parties to the communication
- The name and address of all others who participated in or witnessed the communication

Identify - When used in reference to an individual person, it means to state:

- The person's full name, including all names by which the person has ever been known, the person's last known residential address and telephone number, and other personal contact information
- The person's last known employer, business address, business telephone number, and other business contact information
- The person's title and business or professional affiliation, if any, as of the time to which this answer relates

Identify - When used in reference to any entity other than an individual person, it means to state:

- The entity's full name, and any trade name or fictitious name under which the entity has ever done business, and its organizational nature (e.g., a corporation, limited liability company)
- The entity's last known address
- The state in which the entity has its principal place of business
- In the case of a corporation, the state of incorporation
- In the case of a limited liability company, the state of organization and the name and address of each member
- In the case of a partnership, the name and address of each general partner
- In the case of any business entity other than a corporation, partnership, or limited liability, the name and address of each owner

Identify - When used in reference to an expert witness, it means to state:

- The name, business address, title, and qualifications of the expert
- A detailed description of the subject matter about which the expert is expected to testify
- A detailed description of each and every mental impression and opinion held by the expert with respect to this lawsuit and all facts known by the expert, regardless of when the actual knowledge was acquired, that relate to or form the basis of such mental impressions and opinions
- A detailed description of the case number, and court of each and every case in which such expert has previously provided expert testimony, whether by deposition or at trial
- A detailed description of all facts provided to the expert witness for use in connection with the expert's analysis of all or any portion of the issues in this case. For any such facts that are in document form, attach a copy of such document to your response to these interrogatories
- If the expert has submitted a report, please recite verbatim all contents thereof or attach a copy to your response to these interrogatories.

Well-crafted definitions communicate precisely what information must be included in each answer. By front-loading these expectations, practitioners are more likely to obtain complete and useful responses and avoid unnecessary follow-up discovery.

Drafting Interrogatory Questions

An effectively drafted interrogatory is clear, precise, and designed to elicit useful, complete information while complying with procedural limits. Effective interrogatories have these characteristics:

- Clear and unambiguous language: Use plain, specific wording that leaves little room for misunderstanding or competing interpretations. Avoid vague terms and undefined concepts to reduce the likelihood of objections based on ambiguity or vagueness.
- Focused on a single subject: Limit the question to one topic or line of inquiry. This ensures that the responding party can answer fully and directly and helps avoid objections that the question is compound or overly broad.
- Appropriate scope and proportionality: Seek information that is relevant to the claims or defenses in the case and proportional to the needs of the litigation. Do not request unnecessary background information or impose an unreasonable burden on the responding party.
- Self-contained: Write the question so that it is understandable on its own without requiring reference to prior questions for context. When necessary details such as dates, locations, or identities apply, state them clearly in the question or use defined terms.
- Specific as to time, place, and subject matter: Identify the relevant time period, geographic location, and subject with sufficient precision to guide the responding party and avoid over-inclusive or evasive answers.
- Logically organized: Arrange interrogatories by topic, asking questions related to the same or closely related issues in sequence. Each subject area should be addressed fully before moving on to a new topic, which promotes clarity, coherence, and more efficient responses.
- Drafted to elicit complete responses: Use definitions and careful phrasing to clearly state the level of detail required to ensure that responses include all relevant facts rather than minimal or partial answers.
- Compliant with statutory limitations: Avoid unnecessary subparts and maximize the information obtained within the constraints imposed by Wisconsin discovery rules.

Many litigation firms maintain sample interrogatories or template forms to guide this process, and litigation form books – such as *Wisconsin Pleading and Practice – are* also valuable resources. Once an appropriate sample is located, the client's pleadings, proof chart, and case chronology – as well as the Wisconsin Jury Instructions relating to the cause of action or defense – should be consulted to properly tailor the questions to the client's case.

Most interrogatories begin with questions designed to obtain basic information about the other party (e.g., name, contact information, education, and employment). If the other party is a business entity, the questions should seek information regarding organizational and decision-making structure, past and current employees with knowledge relating to the case, and duties and responsibilities of past or current employees involved in the dispute.

Next, proceed to interrogatories aimed at identifying other individuals who may possess knowledge related to the opposing party's claims or defenses. These questions should seek the identities of potential eyewitnesses, lay witnesses, expert witnesses, and anyone who gave statements to the other party's agents or attorneys. Include questions about people having knowledge about

the party's claimed damages, or changes the party made after the incident underlying the dispute.

Once persons with knowledge have been identified, the next logical step is to request information about documents and other tangible items related to the dispute. Interrogatories should not only ask about the existence and location of these items, but also who controls or created them. Relevant documents may include traffic citations, medical records, earnings statements, invoices, and expense reports, among others.

Example 3.2.5: Instructions For a Set of Interrogatories

INTERROGATORIES

INTERROGATORY 1: Identify the person responding to these interrogatories, designated as [party designation from caption], including a description of your [employment history and level of education] [professional title, duties, and responsibilities - if you are responding on behalf of a business entity].

INTERROGATORY 2: Identify all persons who may possess knowledge regarding any facts or circumstances relating to the incident, including eyewitnesses, lay witnesses, or others who may possess knowledge about your claims or defenses raised or to be raised relating to the incident. Include in your response a confirmation of whether each person identified in response to this interrogatory provided statements (oral, written, or recorded) to you, your agent, or your attorney.

INTERROGATORY 3: Identify all doctors, physicians, health professionals, health care providers, mental health professionals, mental health care providers whom you have seen or with whom you have consulted; all clinics, hospitals, or other treatment facilities where you have received treatment; and all complementary and alternative practitioners (including, but not limited to acupuncturists, herbalists, hypnotherapists, and the like) whom you have seen and with whom you have consulted during the 15 years next preceding the date of the incident through the current date.

INTERROGATORY 4: Identify each and every person whom you intend to or may call as an expert witness during the trial of the above-captioned case.

INTERROGATORY 5: Identify each and every document, communication, or tangible item related in any way to your claims or defenses raised or to be raised relating to the incident, or containing any information related to the incident.[3]

The information obtained through these foundational interrogatories establishes the framework for subsequent questions that develop and refine the factual narrative of the dispute. Substantive analysis then begins with interrogatories aimed at uncovering the facts and circumstances underlying the opposing party's claims or defenses. These interrogatories focus on what happened. They require the responding party to describe the events, actions, and conditions that allegedly give rise to their claims or defenses, grounded in the facts and evidence already identified. As a result, these interrogatories reveal the opposing party's factual narrative of the dispute – what the party contends actually occurred, including when, where, how, and why it occurred.

The next phase of substantive analysis focuses on interrogatories directed at the responding party's application of the law to the facts. These interrogatories clarify the opposing party's legal theory by requiring them to connect specific factual assertions to the legal elements of each claim or defense. In doing so, they compel the responding party to explain how they intend to prove their allegations by identifying the evidence they will rely upon and describing how that evidence supports their legal positions. This narrows the issues by forcing the responding party to articulate precisely why they believe the law entitles them to relief or shields them from liability.

Example 3.2.6: Continued Interrogatory Instructions

[INTERROGATORIES seeking information specific to the claims or defenses of the responding party. For example, health conditions, injuries, or illnesses occurring before the incident; health conditions, injuries, or illnesses occurring before the incident; prescription, non-prescription, or recreational drug use; changes to safety or other procedures made after the date of the incident]

INTERROGATORY #__: State the date, time, location, and sequence of events that you contend led to the incident.

> INTERROGATORY #__: Describe in detail all facts and circumstances upon which you base your claim that the defendant was negligent in [action described in the complaint], including the actions you contend the defendant took or failed to take.
>
> INTERROGATORY #__: Describe the factual basis for your contention that the defendant's conduct was a substantial factor in causing the alleged injuries.
>
> INTERROGATORY #__: State all facts supporting your contention that the plaintiff failed to mitigate damages.[4]

These represent only a portion of the types of interrogatories typically exchanged during discovery.

An increasingly common practice in Wisconsin is to include, after the final interrogatory, a separate section titled Request for Production, which directs the opposing party to produce documents and other items related to the interrogatories and the responses provided. As with stand-alone Requests for Production, the requested items must be described with reasonable particularity so the responding party can readily identify the items sought. Defined terms used in the interrogatories should apply equally to the request for production; consistent terminology reduces ambiguity and helps ensure that document production corresponds to the information disclosed in written answers. In addition, relevant timeframes and document categories should be clearly specified to ensure compliance with the statutory requirements governing production requests. Finally, the request should include specific instructions for organizing and tabulating produced items, requiring the responding party to make clear to which interrogatory or interrogatories each item is related.

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1. Example Instructions for a set of Interrogatories for a Civil Action Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless*. CC BY 4.0).
2. Ibid.
3. Ibid.
4. Ibid.

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3.3: Responding to Written Interrogatories

When responding to interrogatories, parties must balance the desire for effective advocacy and the obligation to provide truthful, complete, and good-faith answers. Attorneys and clients naturally want to provide responses that advance their claims or defenses and to avoid disclosing information that may be harmful to their legal position. However, Wisconsin law requires responses to be complete and truthful, and obligates the responding party to make a reasonable effort to gather the information necessary to provide accurate answers. Wis. Stat. §804.08 (2025). Thus, drafting responses to interrogatories requires careful and practical planning.

An important initial step in responding to interrogatories is to immediately calendar the response deadline and set reminder ticklers well in advance of that date. In Wisconsin, interrogatories must generally be answered within 30 days after service; however, a defendant is not required to respond until 45 days after service of the summons and complaint. Wis. Stat. §804.08(1)(b) (2025). Careful calendaring helps ensure compliance and allows sufficient time for thoughtful preparation of responses.

As a practical matter, it is also advisable to request an electronic copy of the interrogatories from opposing counsel. Doing so eliminates the need for the responding party's legal team to retype the interrogatories and allows responses to be prepared more efficiently and accurately.

The client should be promptly and closely involved in the response-drafting process. Interrogatories should be sent to the client without delay, accompanied by clear instructions explaining the legal obligation to provide complete, accurate, and good-faith answers and to make reasonable efforts to ascertain responsive information. As a best practice, the client should be given a preliminary deadline – typically a week to ten days before the statutory due date – to return draft responses. This approach helps prevent last-minute delays and provides the legal team with adequate time to review, refine, and finalize the responses before filing or service.

Although 30 days may initially appear to be ample time for a client to make a reasonable inquiry and prepare thoughtful responses, many interrogatories cannot be answered quickly. Interrogatory answers are provided in writing and signed under oath; they bind the responding party to their statements and may later be used as evidence in the case. Inaccurate, incomplete, or hastily prepared responses can expose the client to impeachment or sanctions. For these reasons, the legal team should consult with the client early to assess whether the allotted time is realistic given the scope and complexity of the requests. If additional time is necessary, addressing the issue promptly allows counsel sufficient opportunity to seek and negotiate an extension of the response deadline.

In addition to being accurate, interrogatory answers should be clear, direct, and as complete as possible. In some situations, however, even with additional time and reasonable efforts, the requested information may remain unknown. When this occurs, it is appropriate to state that the responding party lacks sufficient information to fully answer the interrogatory despite having made reasonable inquiries. Practitioners must remain mindful that such responses are subject to the continuing duty to supplement as additional information becomes known, whether pursuant to Wisconsin statute or the specific instructions contained in the interrogatories.

Similarly, when a responding party has a legitimate basis for declining or limiting a response, that basis must be clearly and specifically articulated. For example, if the information sought has already been provided in a prior response, the answering party should reference the earlier response rather than repeat the same information. Where an answer would rely on hearsay, inference, or secondhand information, it may be appropriately qualified by indicating a lack of personal knowledge, such as by stating, *"I have no personal knowledge, but have been informed that ...,"* or *"Upon information and belief ...,"* particularly when the source or accuracy of the information is uncertain. In addition, if an interrogatory seeks information protected by privilege, the responding party must expressly assert the applicable privilege and briefly describe the basis for its application, rather than issuing a blanket refusal to respond.

Finally, if interrogatories are cumulative or duplicative, seek information that can be more easily provided by another source, or impose an undue burden or expense, the responding party may seek appropriate relief. Although the phrase "undue burden or expense" is not expressly defined in the Wisconsin statutes, courts generally evaluate whether interrogatories are unduly

burdensome by weighing several practical factors, including:

1. The time required to gather and provide the requested information, particularly whether answering would require a disproportionate or unreasonable expenditure of time.
2. The cost involved in locating, compiling, and producing the information sought.
3. The necessity of the information, including whether the interrogatory seeks information for which there is a legitimate and compelling need.
4. The proportionality of the burden to the benefit, that is, whether the burden imposed on the responding party outweighs the likely benefit to the requesting party.
5. Whether the information has already been disclosed through other discovery methods, rendering the interrogatory duplicative or unnecessary.

Wisconsin law permits a party to request limitations on discovery or to seek a protective order in such circumstances. Wis. Stat. § 804.01(2)(am) (2025).

Once the interrogatory responses have been finalized internally, the legal team should schedule a meeting with the client to review, approve, and sign the final draft. This review allows the client to confirm the accuracy and completeness of the responses, ask questions, and clarify any statements before the answers are submitted under oath. Collaborative review helps prevent errors or misunderstandings and ensures a clear record that the client knowingly and intentionally approved the sworn responses.

Interrogatory responses are more than routine procedural formalities; they play a substantive role in shaping the litigation. Because they carry evidentiary weight, they influence settlement discussions, guide the scope of subsequent discovery, and serve as a foundation for targeted deposition questioning or trial evidence. The information disclosed in interrogatory answers often signals which documents should be requested next and which factual issues warrant further exploration, underscoring the importance of careful preparation and client involvement in the response process. Discovery rules require candor and accuracy, and prohibit evasive, misleading, or incomplete answers. Best practices in answering interrogatories therefore emphasize strategic precision without sacrificing honesty, ensuring that responses protect the client's interests while fully complying with legal and ethical duties imposed by the discovery process.

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3.4: The Paralegal's Role in Written Interrogatories

Paralegals play a key role in the written interrogatory process by assisting with the drafting of both interrogatory questions and responses under attorney supervision. They are also responsible for managing discovery deadlines and coordinating the timely exchange of interrogatories and answers. In addition, paralegals organize, track, and analyze the information produced and received through interrogatories to support effective case preparation and strategy.

In drafting interrogatory questions, paralegals assist the attorney by reviewing the pleadings, case chronology, discovery plan, and proof chart to identify key factual issues and areas requiring clarification. They often prepare initial drafts of interrogatories that are logically organized, tailored to the claims or defenses at issue, and framed to elicit meaningful, complete responses while complying with statutory limits and drafting best practices. This work requires careful attention to definitions, scope, and sequencing, as well as an understanding of how interrogatories fit into the broader discovery strategy.

Paralegals also play a critical role in preparing responses to interrogatories, working closely with both the attorney and the client. First, they docket the response deadline and enter reminders in the law office calendar to ensure timely service to the requesting party. Then, they help coordinate the collection of information by providing the interrogatories to the client, gathering documents, summarizing factual input, and organizing draft responses for attorney review. Throughout this process, paralegals ensure that responses are responsive to the specific questions asked, internally consistent, properly qualified when necessary, and supported by available information.

They also track objections, privilege assertions, and supplementation obligations to ensure that responses remain accurate and defensible as the case develops. Maintaining a discovery log that tracks objections raised in interrogatory responses is a best practice that promotes consistency, efficiency, and strategic control throughout the discovery process. Indexing each objection and linking it to the specific interrogatory number creates a centralized reference that prevents inconsistent positions in later discovery or motions. This consistency is particularly important if multiple attorneys or paralegals work on the case over time.

A discovery log also supports effective case management and motion practice. If disputes arise and a motion to compel or for a protective order becomes necessary, the team can quickly identify which objections were asserted, the legal bases for those objections, and whether similar objections have been raised elsewhere. This streamlines preparation, reduces the risk of overlooking an objection, and allows counsel to evaluate whether objections should be maintained, narrowed, or withdrawn in light of developing facts.

In addition, a well-maintained log helps ensure compliance with ongoing supplementation obligations. Tracking objections alongside substantive responses makes it easier to monitor whether withheld information later becomes discoverable or whether circumstances change in a way that requires updating prior answers. From a practical standpoint, the log also serves as an internal quality-control tool, helping the legal team assess whether objections are being used judiciously rather than reflexively.

Equally important is the paralegal's responsibility for organizing and controlling the information produced in response to interrogatories, whether provided to or received from opposing parties. Paralegals typically index responses, extract key factual admissions, and cross-reference interrogatory answers with produced documents, deposition outlines, and motion practice. Maintaining charts, discovery logs, and issue summaries allows the legal team to quickly locate information, identify gaps or inconsistencies, and assess how the discovery impacts case strategy. By managing discovery materials systematically, paralegals help ensure that information revealed during interrogatories is effectively and strategically used throughout litigation, from settlement evaluation to trial preparation.

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3.5: Key Takeaways

Utilizing Written Interrogatories

- Discovery is designed to eliminate surprise in civil litigation by requiring parties to disclose relevant facts, evidence, and legal theories early in the case.
- Written interrogatories are a foundational discovery tool used to obtain factual information, identify witnesses and documents, and clarify the opposing party's claims or defenses.
- In Wisconsin, interrogatories may be served only on parties to the lawsuit and must be answered in writing and under oath.
- Wisconsin law limits interrogatories to 25 questions, including subparts, making careful planning and prioritization essential.

Drafting Written Interrogatories

- Interrogatories are most effective when used to obtain information that is difficult or inefficient to gather through other discovery tools, such as identifying knowledgeable individuals and clarifying factual and legal contentions.
- Well-drafted interrogatories are clear, precise, self-contained, logically organized, and proportionate to the needs of the case.
- Instructions and definitions enhance clarity, reduce ambiguity, and help elicit complete and consistent responses within statutory limitations.
- Interrogatories should progress logically from foundational information (persons and documents) to factual narratives and, finally, to legal contentions.
- Including a properly drafted Request for Production in conjunction with interrogatories can streamline discovery when it complies with statutory requirements.

Responding to Written Interrogatories

- Responses to interrogatories must balance advocacy with the obligation to provide truthful, complete, and good-faith answers based on reasonable inquiry.
- Interrogatory answers are sworn statements with evidentiary weight and may influence later discovery, settlement negotiations, and trial preparation.
- Objections to interrogatories must be specifically stated, and privileges must be expressly identified and supported.
- Parties have a continuing duty to supplement interrogatory responses as additional information becomes available.
- Wisconsin law permits limitations or protective orders when interrogatories are cumulative, duplicative, or impose an undue burden or expense.

The Paralegal's Role in Written Discovery

- Paralegals play a critical role in drafting interrogatories and responses, managing deadlines, coordinating information gathering, tracking objections, and organizing discovery materials.
- Effective control and analysis of interrogatory information support strategic case development from discovery through trial.

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3.6: Summary

Written interrogatories are a foundational discovery tool in Wisconsin civil litigation. Interrogatories are written questions answered under oath by parties to the lawsuit. Their role is to uncover facts, identify witnesses and documents, and clarify the opposing party's claims and defenses. They are governed by Wisconsin's discovery statutes, which permit broad but proportional inquiry while imposing numerical limits and prohibiting requests for privileged information. When used effectively, interrogatories help narrow disputed issues, shape discovery strategy, and reduce the likelihood of surprise at trial.

Some best practices for drafting interrogatories include the use of clear instructions, carefully crafted definitions, and logically organized questions that progress from foundational information to factual narratives and legal contentions. Interrogatory questions should be precise, focused, and proportionate, while maximizing the limited number allowed under Wisconsin law.

When responding to interrogatories, advocacy must be balanced with the obligation to provide complete, truthful, and good-faith answers. Best practices include calendaring deadlines, involving the client early, qualifying responses when information is unknown or secondhand, asserting privileges and objections appropriately, and seeking protective relief when interrogatories are unduly burdensome. Interrogatory responses are sworn statements with evidentiary significance and can materially influence later discovery, settlement negotiations, and trial preparation.

Litigation paralegals have a critical role in the interrogatory process. They assist with drafting interrogatories and responses, managing deadlines, coordinating information gathering, tracking objections and supplementation obligations, and organizing discovery materials for effective use throughout litigation. By controlling and synthesizing the information produced through interrogatories, paralegals help ensure that discovery is conducted efficiently, strategically, and in compliance with Wisconsin law.

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Terms with Definitions

Interrogatories: Written discovery served on the opposing party that requires that party to answer questions in writing and under oath.

Requests for production: Written discovery served on the opposing party that requires that party to provide documents, electronically stored information (ESI), or other tangible items; the requesting party may also ask that materials or premises be made available for inspection, testing, copying, or sampling.

Motion: A formal written or oral request asking the court to issue an order or ruling on a specific issue before, during, or after trial.

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3.8: References

1. Wis. Stat. § 804.01 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/01]
2. Wis. Stat. § 804.08 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/08]
3. Wis. Stat. § 905.01 (2025). [docs.legis.wisconsin.gov/statutes/statutes/905/01]

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4: CIVIL DISCOVERY – REQUESTS FOR PRODUCTION

4.0: Introduction

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4.2: Drafting Written Requests for Production

4.3: Responding to Written Requests for Production

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4.0: Introduction

Competency: Draft documents relating to requests for production for a civil cause of action.

Learning Objectives

- Discern the types of information that can be obtained through written requests for production
- Categorize the items and actions that are appropriate subjects for written requests for production
- Describe best practices for drafting effective written requests for production
- Anticipate potential objections to written requests for production
- Produce a set of written requests for production that effectively seeks relevant information and complies with Wisconsin statutory requirements
- Summarize the process for responding to written requests for production
- Explain the paralegal's role with respect to requests for production (Organize and control information)

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

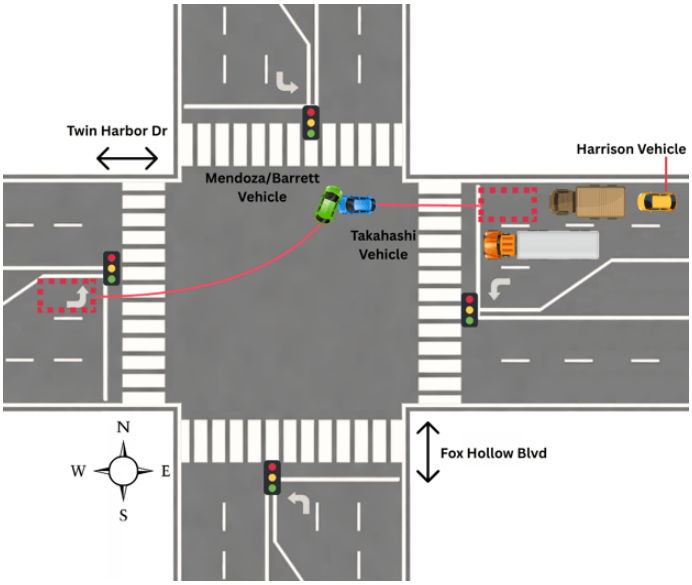

Figure 4.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

In many ways, Requests for Production (RFPs) resemble interrogatories; however, where interrogatories request answers to questions, RFPs seek things or access to things, including tangible items, electronically stored information (ESI), and real property. RFPs are a critical component of any effective discovery strategy because they are the primary mechanism for obtaining the actual evidence on which claims and defenses are based.

Unlike interrogatories, which rely on a responding party's memory, perspective, and narrative framing, RFPs compel the production of underlying source material. A party may provide carefully worded interrogatory responses that are technically accurate yet incomplete or misleading; documents, by contrast, frequently tell a fuller or different story. For example, an interrogatory answer describing compliance with a policy may be undermined by internal emails showing that the policy was ignored, inconsistently applied, or knowingly violated. Similarly, documents may reveal timelines, participants, and decision-making processes that were omitted or minimized in written responses. While interrogatories and depositions reveal what a party *says* about the case, RFPs reveal what the party *has* – documents, ESI, and tangible items that often provide the most objective and persuasive proof of disputed facts.

RFPs also play a key role in testing credibility and preparing for later discovery. The materials produced inform deposition strategy by identifying witnesses to examine, documents to confront them with, and factual issues requiring clarification. In many cases, effective document review leads to more targeted interrogatories, shorter and more focused depositions, and stronger motion practice. Without RFPs, discovery would rely too heavily on self-reported information, increasing the risk that critical evidence remains hidden.

In addition, RFPs are often the only discovery tool capable of uncovering systemic or pattern-based evidence, such as recurring safety violations, prior similar incidents, historical financial data, or long-term communications. These types of evidence are rarely revealed fully through interrogatories alone and may not surface in depositions unless the documents are first identified and produced.

From a strategic standpoint, RFPs also help parties evaluate case value and litigation risk. Reviewing documentary evidence early allows counsel to assess strengths and weaknesses, make informed settlement decisions, and avoid surprises later in the case. Because courts expect parties to base claims and defenses on evidence rather than speculation, RFPs provide the factual foundation necessary to litigate efficiently and credibly.

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4.1: Utilizing Written Requests for Production in a Civil Action

In Wisconsin, Requests for Production (RFPs) permit a party to obtain documents, ESI, and tangible items relevant to the claims or defenses in the action. A requesting party may seek the production, inspection, copying, testing, or sampling of documents and tangible things within the responding party's possession, custody, or control. This includes paper records as well as ESI maintained in any medium, such as emails, text messages, digital photographs, databases, spreadsheets, and other electronic files. Wis. Stat. § 804.09 (2025).

Requests for Production

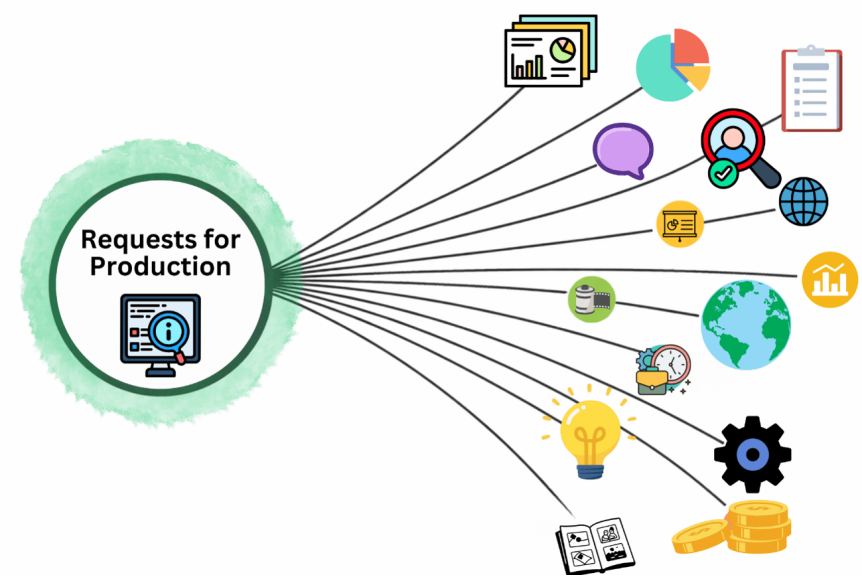

Figure 4.1.1: Requests for Production. (WisTech Open, 2026. *Requests for Production*. CC BY 4.0).

In addition to documents and electronic information, Wisconsin law allows a party to request entry upon land or other property controlled by another party for purposes of inspection, measurement, surveying, photographing, testing, or sampling. These requests are commonly used in cases involving accidents, premises liability, product defects, or property damage.

RFPs are especially useful for:

- Constructing detailed timelines and case chronologies
- Identifying leads for additional witnesses or further document requests
- Creating a comprehensive documentary record
- Providing context for factual and legal contentions—highlighting both strengths and weaknesses for each contention
- Exposing inconsistencies or contradictions in other discovery responses

Similar to interrogatories, plaintiffs may serve RFPs simultaneously with the summons and complaint or at any time after service has been completed. Defendants may serve RFPs on the plaintiff at any time after the summons and complaint have been filed, and on any other party after the party has been served. Wis. Stat. § 804.09(2) (2025).

Limits on Requests for Production

The scope of discovery permitted is broad. Discovery is not limited to potentially admissible evidence; Wisconsin statutes permit inquiry into all non-privileged matters that are relevant to any party's claim or defense and proportional to the needs of the case, regardless of whether the information sought will be admissible at trial. Wis. Stat. § 804.01(2)(a) (2025). Although it may be tempting to draft RFPs that explore every conceivable item even remotely connected to the case, legal practitioners must remain

mindful of the limitations imposed on RFPs by Wisconsin law.

With the exception of health care records, vocational records, or educational records, Wisconsin limits RFPs to a "reasonable time period, not to exceed 5 years prior" to the point in time when the legal claim first arises. Wis. Stat. § 804.09(2)(a)3 (2025). Additionally, RFPs cannot be unreasonably cumulative or duplicative, seek information obtainable from a more convenient source, or impose an undue burden or expense on the responding party in light of the needs of the case. Wisconsin courts apply proportionality principles when evaluating such objections and may issue protective orders or impose limitations as appropriate. Wis. Stat. § 804.01(2)(am) (2025). Any request must be relevant to the claims or defenses and proportional to the needs of the case.

Finally, Wisconsin law prohibits RFPs that seek information protected by privilege. Wis. Stat. § 804.01(2)(a) and (c) (2025). The content of privileged communications recognized in Wisconsin statutes, constitutions, and Supreme Court Rules is not discoverable. Wis. Stat. § 905.01 (2025).[1]

1. Communications with clients, health care providers, clergy, and between spouses are protected; chapter 905 of the Wisconsin Statutes lists other privileges that are similarly not subject to discovery except in limited circumstances. Wis. Stat. Ch. 905 (2025).

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4.2: Drafting Written Requests for Production

The ultimate objective of an RFP is to obtain actual evidence that is either admissible in court or leads to other evidence that may be admissible. Although there is no statutorily required form for RFPs, the form and basic content are somewhat standardized in practice.

RFPs begin with the official caption used in the lawsuit. The title of the RFPs should include the name and party designation of the person requesting them, as well as the name and party designation of the person on whom they are served. The first paragraph further identifies the method of service (typically on the party's attorney) and the statute authorizing the RFPs.



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

[PLAINTIFF OR DEFENDANT], [NAME OF PARTY]'S [FIRST OR SECOND, ETC.] SET OF REQUESTS FOR PRODUCTION TO [PLAINTIFF OR DEFENDANT], [NAME OF PARTY]

TO: [Name of party being served],
Through their attorney, [name of attorney]

The undersigned [Defendant or Plaintiff], [serving party's name] by their attorneys, [name of law firm], hereby requests, pursuant to Wisconsin Statutes §804.09, that you produce for inspection, copying, testing, or sampling, the following. The undersigned [Defendant or Plaintiff], [serving party's name] requests that the production occur at [location] at [time] on [date]. Alternatively, you may deliver photocopies of the requested documents to counsel. Service of a written response to this request is due from you within thirty (30) days of the time service is made upon you, in accordance with Wisconsin Statutes §804.09.

Figure 4.2.1: Example Caption of a set of RFPs for a Civil Action Filed in Wisconsin Court. (WisTech Open, 2026. *Summons example by Beth Pless.* CC BY 4.0.)

Although not required by statute, best practice dictates the inclusion of instructions and relevant definitions.

Drafting Request for Production Instructions

Similar to interrogatories, the purpose of the instructions section in RFPs is to inform the responding party of the statutory requirements and expectations for answering. Typical instructions borrow language from Wis. Stat. § 804.09(2)(b) (2025), as well as additional requirements supported by Wisconsin law.

Example 4.2.1: Instructions for a Set of RFPs

INSTRUCTIONS

1. Unless otherwise directed in these requests or ordered by the court, documents shall be produced in the form in which they are kept in the usual course of business.
2. All electronically stored information shall be produced in the following format: [describe desired format, e.g., searchable PDF files, native format with metadata intact]
3. In these requests, any copy of a document, regardless of form, that is not identical to the original constitutes a separate document that must be produced. For example, any document that contains any comment, notation, addition, signature, insertion, or marking of any kind, so that it is different from the original, is a separate document.
4. Identical electronically stored information need not be produced in more than one form.
5. If you are unable to produce any of the documents or ESI called for in this request, explain in detail the reason you cannot comply.

6. If you are unable to produce any of the documents called for in this request because such documents are no longer in your custody, control, or possession, please identify the document and the person, department, subdivision, or subsidiary that does have custody, control, or possession of said document.
7. You are under a continuing duty to seasonably supplement your response in accordance with Section 804.01(5), Wis. Stats., with respect to any incorrect response when you later learn that it is incorrect.[1]

Another important topic often included in the instructions is a description of the procedures for objecting to RFPs. Below is an example:

Example 4.2.2: Instructions Objecting to RFPs

8. If you object to, or otherwise decline to provide documents or electronically stored information, with respect to any portion of a request, provide all the documents or electronically stored information called for in that portion of the request to which you do not object or which you do not decline to provide.
9. If you object to any request or any portion of a request, or withhold any information on the ground that the information is privileged or false within the work-product doctrine, state the nature of the privilege or doctrine you claim protects the information requested. If a document is involved, identify it and identify all persons known to you who have seen the document. If an oral communication is involved, identify it and identify all persons known to you to whom the substance of the oral communication has been disclosed. Finally, state any other facts you rely on to establish that the privilege has been properly claimed.
10. If you object to any request or any portion of a request pursuant to Sections 804.01(2)(am), Wis. Stats., please set forth all the facts upon which you rely as the basis for your objection.
11. If you object to any request or portion of a request for electronically stored information pursuant to Sections 804.01(2)(e), Wis. Stats., please set forth all the facts upon which you rely as the basis for your objection.[2]

It is also a best practice to include specific instructions as to how the responding party should organize, tabulate, or label responses. Typically, the responding party is instructed to label and organize responses in a manner that specifies the particular request or interrogatory to which the response relates. Lastly, some attorneys also like to include an instruction explicitly directing that the definitions section applies to all RFPs.

Drafting Request for Production Definitions

Although the right to inspect physical evidence and ESI is very broad, Wisconsin statutes require each RFP to describe the items sought with reasonable particularity, allowing the responding party to identify what must be produced. Wis. Stat. § 804.09(2) (2025). Overly vague or overly broad requests may be subject to objection or limitation. The definitions section in RFPs can provide the required particularity while avoiding lengthy, cumbersome requests that are difficult to read and understand.

Once again, careful review of the client's file – particularly the pleadings, proof chart, and case chronology – can assist in identifying words, phrases, or descriptions that are likely to recur throughout the RFPs, making them well-suited for inclusion in a centralized definitions section.

For example, in personal injury cases, defining the word "incident" to include the date, time, location, and basic mechanism of injury. Similarly, in automobile accident cases, each party's vehicle can be defined by make, model, year, and VIN. The table below contains examples of how such words might be defined.

Example 4.2.3: Personal Injury Case Definitions

Document(s): "Document" is used in the broadest possible sense and refers to any form of communication or data storage, however produced or reproduced, regardless of whether it now exists. This definition includes, but is not limited to, advertisements, agreements, books, calculations, canceled checks, charts, computer printouts, contracts, data compilations from which information can be obtained, data sheets, data processing cards, diaries, drawings, electronically stored information, forms, graphs, handwritten notes, indexes, invoices, letters, memoranda, pamphlets, periodicals, photographs,

> records, reports, studies, tapes, telegrams, and working papers, as any written, printed, typed, or graphic matter of any kind or nature, now in the possession, custody, or control of a party to this action, or in the possession, custody, or control of the present or former officers, agents, representatives, employees of a party, or any and all persons acting in its or the party's behalf, including documents at any time in the possession, custody, or control of such individuals or entities, or known by the responding party to exist.
>
> **Incident**: The collision that occurred at the intersection of [name of street] and [name of street] between [name of driver 1] and [name of driver 2], on or about [Month, Day, Year] at approximately [time a.m./p.m.]
>
> **Plaintiff's vehicle**: The motor vehicle operated by [name of plaintiff] at the time of the incident, specifically, a [year, make, model] with a VIN [vehicle identification number, if known]
>
> **Relate/Relating to:** These terms are synonymous with "refer to," "summarize," "contain," "include," "mention," "explain," "discuss," "define," "describe," "point out," "comment on," "remark," and similar words and phrases.
>
> **You/Your**: The defendants, their present and former members, officers, agents, employees, and all other persons acting or purporting to act on their behalf, including all present or former members, officers, agents, employees, and all other persons exercising or purporting to exercise discretion, making policy, and making decisions

For other types of causes of action, it may be useful to define terms such as agreement, computer, or report.

By clearly defining key terms, legal practitioners can streamline RFPs while minimizing the risk of objections based on vagueness. Well-crafted definitions communicate precisely what information must be produced. By front-loading these expectations, practitioners are more likely to obtain complete and useful responses and avoid unnecessary follow-up discovery.

Drafting the Requests

Effectively drafted RFPs are clear, focused, and designed to obtain relevant evidence efficiently while complying with discovery rules. In practice, strong RFPs share several common characteristics:

- Clear and specific descriptions: Describe the documents, electronically stored information, or tangible items sought so the responding party can readily identify what must be produced. Vague or open-ended language is avoided to reduce objections and confusion.
- Compatible with other discovery tools: Seek documents or things identified in interrogatory responses or materials that will be useful for depositions.
- Relevance and proportionality: Focus on materials that meaningfully advance fact-finding rather than speculative or marginally relevant information.
- Appropriate limitations on scope: Include reasonable limits as to time period, subject matter, and, when appropriate, custodians or sources.
- Logical organization: Group related subjects together (for example, incident-related records, damages documentation, or communications concerning a specific event).
- Compliant with statutory requirements: Adhere to Wisconsin discovery rules, including limits on scope, protections for privileged material, and requirements for reasonable particularity.

Taken together, these characteristics ensure that Requests for Production function as a powerful and efficient discovery tool—one that uncovers substantive evidence, narrows disputed issues, and supports informed litigation strategy.

Many litigation firms maintain sample RFPs or template forms to guide this process, and litigation form books – such as *Wisconsin Pleading and Practice – are* also valuable resources. Once an appropriate sample is located, the client's pleadings, proof chart, and case chronology – as well as discovery responses already received – should be consulted to properly tailor the requests to the client's case.

Standalone RFPs tend to be somewhat less formulaic than interrogatories, in terms of the order in which information is requested. However, many practitioners find it helpful to use an order similar to that used in their interrogatories:

1. Requests for documents related to the opposing party, such as licenses, certifications, and insurance policies providing coverage that might relate to the incident. If the opposing party is a business entity, requested documents might relate to organizational and decision-making structure, operations, management and governance records, policies and procedures, manuals or handbooks, and staff listings
2. Any and all documents or other media in the possession of the opposing party that relate in any way to the party's claims or defenses (including copies of bills, estimates, invoices; photos, videos, social media posts, other audio- or visual-recordings; diaries, correspondence, e-mails or other electronic messages, hand written items; expense reports, accounting records, or financial reports; documentation of procedures existing before or after the incident or proposed or implemented changes to those procedures)
3. Reproductions of any and all items, documents, ESI, or other information provided to health care providers of any type consulted or hired by the opposing party, who provided any type of treatment or advice to the opposing party, or identified by the opposing party in responses to interrogatories
4. Statements, reports, or transcriptions of interviews given by or to the opposing party, an agent of the opposing party, or the opposing party's insurer relating to the incident
5. Reproductions of any and all items, documents, ESI, or other information provided to expert witnesses consulted or hired by the opposing party, or identified by the opposing party in responses to interrogatories
6. Any and all written results, findings, memoranda, files, documents, correspondence, photographs, reports, tests, or any other written materials or items relating to any testing, reconstruction, inspection, calculations, statistics, alleged future losses, damages, or any other matters relating to the claims of the plaintiff herein that may have been done by the plaintiff or any of their agents, representatives, expert witnesses, or advisors with respect to party's claims or defenses
7. Reproductions of any and all reports or other documents provided to or received from any governmental or other agency related to the incident, including citations, warnings, official orders; tax returns/records and earnings statements; applications for, approval of, or denial of benefits

For RFPs seeking documents or other items, the final paragraph describes where and when the items should be produced – typically the attorney's office, during regular business hours – if this is not part of the instructions section.

A request for documents is generally sufficient when the dispute concerns transactions, communications, decision-making processes, financial data, or historical records. However, an RFP seeking permission to enter an opposing party's real property is more appropriate when the information or evidence sought cannot be fully captured, evaluated, or verified through documents alone. In those instances, the RFP should seek permission to access the opposing party's real property for the purpose of inspecting, measuring, surveying, photographing, or sampling the property or any designated object or operation.

Entry onto real property is preferable when the condition, layout, or physical characteristics of the property are themselves central to the claims or defenses. For example, in premises-liability, construction-defect, or accident-scene cases, photographs, reports, or diagrams may exist, but they may be incomplete, outdated, selective, or insufficient to convey critical details such as sightlines, distances, elevations, lighting conditions, surface textures, or obstructions. Testing or measurement may be required when certain facts or conditions can only be confirmed through physical inspection or testing; for example, whether a step complies with code, whether a floor surface is slippery, whether machinery functions as described, or whether safety features are visible from a particular vantage point.

Documents may describe policies, maintenance, or compliance, but they cannot substitute for firsthand evaluation of how the property actually exists or how it operated at the relevant time. A site inspection allows the requesting party to independently assess these conditions rather than relying solely on the opposing party's descriptions or records.

Similarly, with respect to ESI, the appropriate techniques for inspection and the right to view the original form in which the information was created depend heavily on the nature of the information at issue. The inspection of original, voluminous business records is usually best accomplished, by agreement, at the place where the records are maintained.

RFPs are particularly important because they uncover contemporaneous records created at or near the time of the events in dispute. Documents such as emails, text messages, contracts, medical records, maintenance logs, photographs, videos, business records, and electronic data often capture facts more accurately than later recollections. These materials can corroborate or contradict witness testimony, expose inconsistencies, and reveal facts that a party may not disclose voluntarily through written answers or oral testimony.

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1. Example Instructions for of a set of RFPs for a Civil Action Filed in Wisconsin Court (WisTech Open, 2026. *Summons example*

by Beth Pless. CC BY 4.0).

2. Ibid.

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4.3: Responding to Written Requests for Production

Attorneys and clients naturally seek to frame responses in a manner that advances their claims or defenses while limiting the disclosure of information that could undermine their position. However, as with responses to interrogatories, parties answering RFPs must balance effective advocacy with their obligation to provide truthful, complete, and good-faith disclosures. Because these competing considerations often arise in evaluating the scope and sufficiency of document production, responding requires careful, strategic, and practical planning to ensure compliance with discovery obligations while protecting the client's interests.

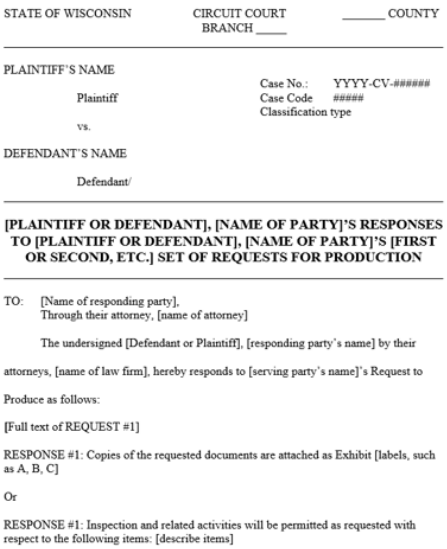
An important initial step in responding to RFPs is to immediately calendar the response deadline and set reminder ticklers well in advance of that date. In Wisconsin, RFPs must generally be answered within 30 days after service; however, a defendant is not required to respond until 45 days after service of the summons and complaint. Wis. Stat. §804.09(2)(b) (2025). As a practical matter, it is also advisable to request an electronic copy of the RFPs from opposing counsel. Doing so eliminates the need for the responding party's legal team to retype the RFPs.

Responding to Requests for Production (RFPs) requires a structured, collaborative process that ensures compliance with discovery obligations while protecting the client's interests. The process typically begins with initial review and planning. The legal team reviews each request to understand its scope, relevance, and potential areas of concern, such as privilege or undue burden.

The next step is client coordination and information gathering. Similar to responding to interrogatories, the client should be promptly and closely involved in the response-drafting process. RFPs should be sent to the client without delay, accompanied by clear instructions explaining the legal obligation to provide complete, accurate, and good-faith answers and to make reasonable efforts to ascertain responsive information. The paralegal plays a central role in providing the client with the RFPs, along with clear instructions regarding the obligation to conduct a reasonable search for responsive materials. The paralegal helps the client identify likely sources of documents, including paper files, email accounts, electronic storage systems, and third-party custodians. This may involve preparing collection checklists, organizing document categories, and working with the client to gather and review materials for responsiveness. As a best practice, the client should be given a preliminary deadline – typically a week to ten days before the statutory due date – to return draft responses. This approach helps prevent last-minute delays and provides the legal team with adequate time to review, refine, and finalize the responses before filing or service.

Once documents are collected from the client, the paralegal assists in organizing and analyzing the materials, separating responsive from nonresponsive items, and flagging documents that may be privileged, confidential, or sensitive. Paralegals often create document indexes, summaries, or logs (such as privilege logs) to document the attorney's determinations about what should be produced, withheld, or redacted.

The next phase involves drafting written responses. Responses to RFPs differ from responses to interrogatories in both form and purpose. Rather than providing narrative answers, the responding party must state whether it will produce the requested materials, identify the scope of its compliance, and specify any objections or limitations. In addition, when a request seeks entry onto real property for inspection, the response must indicate whether access will be permitted and under what conditions or qualifications, if any. The paralegal often prepares a draft response document that includes objections, statements of compliance, and descriptions of the scope of production. The attorney reviews and refines these responses to ensure that objections are properly stated and supported, and that the responses accurately reflect what will be produced. Below is an example template for responses to RFPs.



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

[PLAINTIFF OR DEFENDANT], [NAME OF PARTY]'S RESPONSES TO [PLAINTIFF OR DEFENDANT], [NAME OF PARTY]'S [FIRST OR SECOND, ETC.] SET OF REQUESTS FOR PRODUCTION

TO: [Name of responding party],
Through their attorney, [name of attorney]

The undersigned [Defendant or Plaintiff], [responding party's name] by their attorneys, [name of law firm], hereby responds to [serving party's name]'s Request to Produce as follows:

[Full text of REQUEST #1]

RESPONSE #1: Copies of the requested documents are attached as Exhibit [labels, such as A, B, C]

Or

RESPONSE #1: Inspection and related activities will be permitted as requested with respect to the following items: [describe items]

Figure 4.3.1: Example Instructions for a set of RFPs for a Civil Action Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless.* CC BY 4.0.)

Like interrogatories, when a responding party has a legitimate basis for declining or limiting a response, that basis must be clearly and specifically articulated. For example, if a request seeks information protected by privilege, the responding party must expressly assert the applicable privilege and briefly describe the basis for its application, rather than issuing a blanket refusal to respond.

Confidential and proprietary business information presents unique concerns when Requests for Production seek disclosure of business records. Wisconsin law recognizes these concerns and permits a party to seek a protective order to prevent disclosure entirely or to limit the manner in which sensitive information is disclosed. The party seeking protection must demonstrate a legitimate privacy or proprietary interest that justifies limiting disclosure. In such cases, courts typically require disclosure subject to a confidentiality order or a confidentiality agreement between the parties, restricting how the information may be used or shared. Wis. Stat. § 804.01(3) (2025).

Finally, if RFPs are cumulative or duplicative, seek information that can be more easily provided by another source, or impose an undue burden or expense, the responding party may seek appropriate relief. Although the phrase "undue burden or expense" is not expressly defined in the Wisconsin statutes, courts generally evaluate whether RFPs are unduly burdensome by weighing several practical factors, including:

1. The time required to gather and provide the requested information, particularly whether answering would require a disproportionate or unreasonable expenditure of time.
2. The cost involved in locating, compiling, and producing the information sought.
3. The necessity of the information, including whether the interrogatory seeks information for which there is a legitimate and compelling need.
4. The proportionality of the burden to the benefit, that is, whether the burden imposed on the responding party outweighs the likely benefit to the requesting party.
5. Whether the information has already been disclosed through other discovery methods, rendering the interrogatory duplicative or unnecessary.

Wisconsin law permits a party to request limitations on discovery or to seek a protective order in such circumstances. Wis. Stat. § 804.01(2)(am) (2025). Discovery of ESI is subject to the same relevance and proportionality limitations that apply to traditional documents. Wis. Stat. § 804.01(2)(e) (2025).

After the responses are finalized internally, the process moves to production and organization of documents. The paralegal coordinates the preparation of responsive materials for production, ensuring that documents are organized, labeled, and produced in a usable format. This may include numbering documents (e.g., Bates numbering), grouping them by request, and preparing cover letters or production logs. Below is an example of what Bates numbering of documents might look like in the Mendoza fact scenario:

Example 4.3.1: Bates Numbering of Documents

1. Police Report

MENDOZA_000001 - MENDOZA_000010

Description: Brown County Sheriff's Office Accident Report dated May 29, 2025

2. Photographs of Accident Scene

MENDOZA_000011 - MENDOZA_000025

Description: Photographs of intersection at Twin Harbor Drive and Fox Hollow Boulevard

3. Medical Records (Plaintiff)

MENDOZA_000026 - MENDOZA_000080

Description: Medical records and billing statement from Aurora BayCare Medical Center

4. Vehicle Repair Records

MENDOZA_000081 - MENDOZA_000095

Description: Repair estimates and invoices for Mazda Miata

5. Insurance Communications

MENDOZA_000096 - MENDOZA_000120

Description: Correspondence between Plaintiff and ABC Insurance Company

The paralegal also ensures that the production complies with any agreed-upon formatting requirements, such as electronic file types or organizational structure, and with instructions regarding organization and labeling contained in the original RFP.

Finally, the process concludes with client review, service, and follow-up. The legal team may consult with the client to confirm the completeness of the production and the accuracy of the responses. Once approved, the responses and documents are served on opposing counsel. The paralegal then updates tracking systems, logs what has been produced, and monitors any ongoing obligations, including supplementation if additional responsive materials are later discovered.

Document Production Log/Index

Table 4.3.1: Sample Document Production Log/Index

ID/Bates No.	Description	Source	Date Produced	Opposing Party to Whom Produced	Not Produced/Objections

The process above demonstrates that, while 30 days may initially appear to be ample time, properly responding to RFPs can take a significant amount of time. Rushed, inaccurate, or incomplete responses to RFPs can seriously harm a client's case. From a procedural standpoint, inadequate production may result in court sanctions, including monetary penalties, exclusion of evidence, or adverse inferences that missing information would have been unfavorable. It can also damage the client's credibility if documents later surface that should have been produced, allowing opposing counsel to argue that the client was evasive or

untrustworthy and to use the inconsistency for impeachment.

Substantively, poor responses can disrupt case strategy and increase litigation costs. Incomplete production may cause the legal team to overlook key evidence, prepare inadequately for depositions, or be surprised by opposing evidence later in the case. It can also lead to motions to compel and ongoing discovery disputes, diverting time and resources. Ultimately, failing to properly identify and produce relevant materials may weaken the client's ability to prove their own claims or defenses, making careful and thorough responses essential to effective litigation.

For these reasons, the legal team should consult with the client early to assess whether the allotted time is realistic given the scope and complexity of the requests. If additional time is necessary, addressing the issue promptly allows counsel sufficient opportunity to seek and negotiate an extension of the response deadline.

RFPs play a critical role in shaping the evidence and direction of the litigation. The documents and materials produced often form the foundation of the case, influencing settlement negotiations, guiding the scope of subsequent discovery, and serving as key exhibits for depositions, motions, and trial. The scope and completeness of document production can reveal the strengths and weaknesses of each party's position and may uncover facts not disclosed through other discovery methods. Wisconsin statutes provide a comprehensive framework for RFPs, balancing broad access to relevant information with protections against overreach, burden, and invasion of privilege.

Because Requests for Production require disclosure of actual evidence, discovery rules demand candor, completeness, and accuracy, and prohibit evasive or incomplete production. Best practices therefore emphasize careful planning, thorough document collection, and strategic precision in responses and production decisions. By ensuring that all responsive, non-privileged materials are properly identified and produced, the responding party can both comply with legal and ethical obligations and protect the client's interests throughout the litigation process.

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4.4: The Paralegal's Role in Written Requests for Production

Paralegals play a critical role in every aspect of RFPs, from initial drafting through document organization and ongoing case management. Their work supports both the strategic development of the case and compliance with discovery obligations.

In drafting RFPs, paralegals assist attorneys by reviewing pleadings, discovery plans, and the case chronology to identify the types of documents and tangible items most relevant to the claims or defenses. They often prepare initial drafts of requests that are clearly written, logically organized, and tailored to the issues in the case. This includes using defined terms, incorporating appropriate timeframes and document categories, and ensuring that requests are specific enough to be enforceable while broad enough to capture meaningful evidence. Paralegals may also adapt firm templates or form-book examples to the facts of the case, helping ensure that the requests comply with statutory requirements and align with the overall discovery strategy.

Paralegals are equally involved in preparing responses to RFPs, working closely with both the attorney and the client. They coordinate the document-collection process by providing the requests to the client, explaining the obligation to conduct a reasonable search, and assisting in identifying locations where responsive materials may exist, including electronic systems and physical files. As documents are gathered, paralegals help organize and review them for responsiveness, flag potentially privileged or confidential materials, and assist in preparing draft written responses indicating whether each request will be answered, objected to, or partially complied with. They also help create privilege logs, track objections, and ensure that responses are complete, consistent, and ready for attorney review.

A key aspect of the paralegal's role is organizing and controlling the information produced and received. This includes assigning Bates numbers to documents, creating indexes or production logs, and labeling materials so they can be easily referenced in depositions, motions, and at trial. Paralegals often cross-reference produced documents with interrogatory responses, deposition outlines, and key issues in the case, allowing the legal team to quickly locate relevant evidence and identify gaps or inconsistencies. Maintaining organized discovery files also supports the ongoing duty to supplement responses as new information becomes available.

Throughout this process, the paralegal's role is essential. Paralegals manage deadlines, coordinate communication with the client, organize and analyze large volumes of information, track objections and privilege claims, and ensure that both responses and productions are complete, accurate, and properly formatted. By maintaining organized records and systematically controlling discovery materials, paralegals help ensure that the information obtained and produced through RFPs can be efficiently used in later stages of litigation, including depositions, motion practice, and trial preparation.

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4.5: Key Takeaways

Utilizing Written RFPs

- Requests for Production (RFPs) are a primary discovery tool used to obtain documents, electronically stored information (ESI), tangible items, and access to real property, providing the actual evidence underlying claims and defenses.
- RFPs differ from interrogatories in that they reveal what a party possesses, rather than what a party states, making them a critical source of objective and contemporaneous evidence.
- Documentary evidence obtained through RFPs often corroborates, contradicts, or clarifies testimony and plays a central role in shaping litigation strategy, settlement evaluation, and trial preparation.
- Wisconsin law permits broad discovery of relevant, non-privileged information, but RFPs must be proportional to the needs of the case and may not be cumulative, duplicative, or unduly burdensome.
- Most RFPs are subject to a five-year time limitation prior to when the claim arises, with limited exceptions for certain categories of records.

Drafting Written RFPs

- RFPs must describe requested materials with reasonable particularity so the responding party can identify and produce the requested items.
- Privileged information is not discoverable, and responding parties must assert privileges specifically and appropriately under Wisconsin law.
- Requests for entry onto real property are appropriate when physical conditions or characteristics of a location are directly at issue and cannot be adequately evaluated through documents alone.
- Effective RFPs are clear, specific, logically organized, and coordinated with other discovery tools, often building on information obtained through interrogatories.
- Instructions and definitions improve the clarity and enforceability of RFPs by reducing ambiguity and ensuring consistent interpretation.

Responding to Written RFPs

- Responding to RFPs requires a careful balance between advocacy and the duty to provide complete, accurate, and good-faith production.
- The response must indicate whether the party will produce materials, object, or comply in part, and must clearly define the scope of production.
- A proper response involves a systematic document-collection process, including identifying sources, reviewing materials for responsiveness, and addressing privilege and confidentiality concerns.
- Courts may issue protective orders or confidentiality agreements to safeguard proprietary or sensitive business information when disclosure is necessary.
- Rushed or incomplete responses can result in sanctions, credibility damage, increased costs, and weakened case strategy, underscoring the importance of thorough preparation.
- Bates numbering and organized **production** are essential for tracking and referencing documents throughout litigation.

The Paralegal's Role in RFPs

- Paralegals play a key role in drafting RFPs and responses, coordinating document collection, managing deadlines, organizing materials, and maintaining discovery logs.

- Effective organization and control of produced materials ensure that documentary evidence can be efficiently used in depositions, motions, and trial preparation.

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4.6: Summary

Requests for Production are indispensable because they move discovery beyond descriptions and assertions to the actual evidentiary record. They uncover materials that other discovery tools cannot reliably obtain and ensure that the case is developed based on objective proof rather than selective recollection or advocacy alone. Unlike interrogatories, which rely on a party's narrative responses, RFPs compel the production of documents, electronically stored information (ESI), tangible items, and, in some cases, access to real property. By revealing what a party *has* rather than what a party *says*, RFPs provide objective, contemporaneous evidence that often confirms, clarifies, or contradicts other discovery responses and forms the evidentiary foundation of the case.

Requests for Production serve several important strategic functions, including constructing timelines, identifying additional sources of information, uncovering patterns of conduct, and evaluating the strengths and weaknesses of a case. Wisconsin law permits broad discovery of relevant, non-privileged information, but this scope is tempered by proportionality requirements and statutory limitations, including time restrictions and protections for privileged material.

As with interrogatories, it is a best practice to include clear instructions, carefully crafted definitions, and requests that describe items with reasonable particularity. Effective RFPs are precise, logically organized, limited in scope, and coordinated with other discovery tools to maximize efficiency and minimize objections. Practitioners are encouraged to tailor requests to the case using pleadings and other discovery materials while ensuring compliance with applicable statutes.

When responding to RFPs, the legal team must balance advocacy with the duty to provide complete and good-faith production. The structured process includes reviewing requests, coordinating with the client to conduct a reasonable search, organizing and reviewing documents, asserting appropriate objections, and preparing written responses that clearly state the extent of compliance. Careful planning is key, as inadequate or incomplete responses can result in sanctions, credibility issues, increased costs, and strategic disadvantages.

Paralegals provide critical support in this process, assisting with drafting requests, coordinating document collection, organizing and reviewing materials, preparing responses, and managing production through tools such as Bates numbering and document indexing. By maintaining organized and controlled discovery records, paralegals help ensure compliance with discovery obligations and enable the legal team to effectively use documentary evidence in later stages of litigation.

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Terms with Definitions

Bates numbering: A method of assigning a unique, sequential identifier to each page of documents produced in discovery to facilitate organization, reference, and tracking.

Requests for production (RFPs): Written discovery served on the opposing party that requires that party to provide documents, electronically stored information (ESI), or other tangible items; the requesting party may also ask that materials or premises be made available for inspection, testing, copying, or sampling.

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4.8: References

1. Wis. Stat. § 804.01 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/01]
2. Wis. Stat. § 804.09 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/09]
3. Wis. Stat. § 905.01 (2025). [docs.legis.wisconsin.gov/statutes/statutes/905/01]

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5: DEPOSITIONS

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5.0: Introduction

Competency: Draft documents relating to depositions for a civil cause of action.

Learning Objectives

- Categorize the types of depositions by purpose and witness types
- Determine the required content for a subpoena ad testificandum in Wisconsin
- Describe the items that can be requested in a subpoena duces tecum
- Determine the required content for a Notice of Deposition in Wisconsin
- Produce a Notice of Deposition that complies with Wisconsin statutory requirements
- Produce an effectively organized deposition abstract containing appropriate essential information
- Explain the paralegal's role with respect to depositions

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!"

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

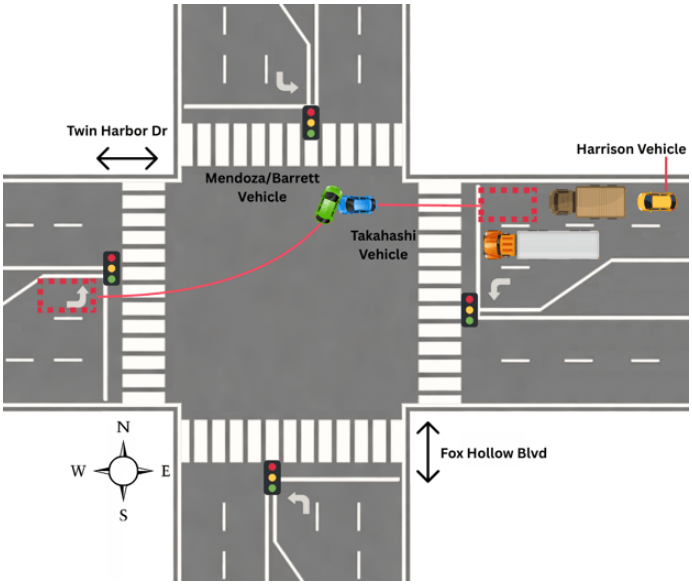

Figure 5.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

Depositions are among the most important and widely used discovery tools in civil litigation. Unlike written discovery methods, depositions provide attorneys with the opportunity to question parties and witnesses directly under oath, allowing them to gather information, evaluate credibility, preserve testimony, and assess the strengths and weaknesses of a case. A well-conducted deposition can reveal critical facts, clarify disputed issues, and influence settlement negotiations, motion practice, and trial strategy. For paralegals, depositions require extensive preparation, organization, and follow-through. From coordinating schedules and preparing exhibits to managing deposition records and summarizing testimony, paralegals play a vital role in ensuring that the deposition process is efficient, effective, and supportive of the litigation team's overall objectives.

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5.1: Utilizing Depositions in a Civil Action



Figure 5.1.1: Answering questions in a deposition. (Created on Gemini).

As you learned previously, depositions are primarily a form of oral discovery. Unlike most other discovery tools, depositions may be taken from both parties and non-parties. A deposition allows an attorney to require a person to appear and answer questions under oath before a court reporter, outside of the courtroom. In Wisconsin, depositions are governed by Wis. Stat. §804.05 (2025).

Depositions serve several important purposes in civil litigation. They allow attorneys to gather information, evaluate witnesses, preserve testimony, and prepare for trial. Depositions are particularly useful for:

- Preserving testimony if a witness later becomes unavailable
- Evaluating a witness's credibility and demeanor
- Identifying additional witnesses or new document requests
- Authenticating exhibits for later use at trial
- Revealing inconsistencies or contradictions in prior discovery responses

Although all depositions involve sworn testimony, they may be categorized in two different ways: by purpose and by witness type. Understanding these classifications helps legal professionals determine the objectives of the deposition and the preparation required for each.

Depositions Classified by Purpose

A discovery deposition is taken primarily to gather information and learn what a witness knows about the facts of the case. Most depositions conducted during the discovery phase fall into this category. The purpose is to uncover relevant facts, assess the strengths and weaknesses of claims and defenses, evaluate witness credibility, and develop litigation strategy. Because the goal is information gathering rather than presenting evidence to a jury, the scope of questioning is generally broader than what would be permitted at trial. Attorneys often use discovery depositions to identify additional witnesses, locate documents, and narrow the issues in dispute.

A trial preservation deposition, sometimes called an evidentiary deposition, is taken for the purpose of preserving testimony that may later be presented at trial. These depositions are commonly used when a witness may be unavailable to testify in person due to illness, age, distance, military service, or other circumstances. Because the testimony is intended to be offered as evidence at trial, evidentiary depositions are generally conducted more formally and with closer attention to evidentiary rules and objections. The testimony may later be read into the record or, if videotaped, played for the jury. Expert witnesses are frequently deposed in

this manner when the cost or inconvenience of live trial testimony would be significant.

A perpetuation deposition is a special type of deposition used to preserve testimony before a lawsuit is filed or before formal discovery begins. These depositions are permitted only in limited circumstances when there is a substantial risk that important testimony may be lost if it is not preserved immediately. For example, a party may seek to perpetuate testimony from a witness who is seriously ill or whose future availability is uncertain. The purpose is to preserve evidence for anticipated litigation rather than to discover additional facts. In Wisconsin, a person seeking to perpetuate testimony before filing an action must file a verified petition identifying the anticipated lawsuit, the facts to be established, the reasons the testimony should be preserved, the expected adverse parties, and the witnesses to be examined. The petition must also request a court order authorizing the depositions. Notice of the petition and hearing must be served on all expected adverse parties at least 20 days before the hearing. Wis. Stat. §804.02 (2025).

Depositions Classified by Witness Type

A party deposition involves the examination of a plaintiff, defendant, or another party to the lawsuit. Because parties are directly involved in the dispute, they usually possess extensive knowledge about the facts, claims, defenses, and damages at issue. Party depositions are among the most common depositions in civil litigation. Attorneys use them to obtain admissions, evaluate credibility, clarify factual allegations, explore defenses, and assess how a party is likely to perform as a witness at trial.

A fact witness deposition involves a person who is not a party to the lawsuit but has personal knowledge of relevant events. Examples include eyewitnesses, employees, customers, neighbors, business associates, or anyone else who observed or participated in events related to the dispute. The purpose of a fact witness deposition is to gather information, corroborate or contradict other evidence, and preserve testimony. Because non-parties are not involved in the litigation, their attendance is typically secured through a subpoena.

An expert witness deposition is conducted to examine a witness who has specialized education, training, skill, or experience relevant to the case. Experts are often retained to provide opinions regarding technical or scientific matters beyond the knowledge of an average juror. The purpose of an expert deposition is to explore the expert's qualifications, opinions, methodologies, assumptions, and conclusions. These depositions help attorneys evaluate the strength of the expert's testimony, identify weaknesses in the expert's analysis, and prepare for cross-examination at trial. Common expert witnesses include:

- Physicians and medical specialists;
- Engineers;
- Accountants and financial experts;
- Economists;
- Accident reconstruction specialists; and
- Vocational rehabilitation experts.

A treating physician deposition is a specialized type of deposition frequently used in personal injury and medical malpractice litigation. Unlike a retained expert, a treating physician's testimony is based primarily on observations made while providing medical care to the patient. The purpose of the deposition is to obtain testimony regarding the patient's injuries, diagnosis, treatment, prognosis, and causation. Because treating physicians often provide critical evidence concerning damages and future medical needs, their testimony can significantly influence the outcome of a case.

A corporate representative deposition is taken under Wis. Stat. §804.05 (2025). Instead of deposing an individual employee, a party identifies topics about which testimony is sought, and the organization must designate one or more representatives to testify on its behalf. The designated witness speaks for the organization rather than solely from personal knowledge. As a result, the testimony may be binding on the entity. The purpose of this deposition is to obtain the organization's official position on specific subjects and to efficiently gather information that may be dispersed among multiple employees, departments, or records.

Special Deposition Formats

Oral depositions typically occur at the office of the attorney requesting the deposition (often called the deposition sponsor). Sometimes these depositions are videotaped in addition to being transcribed by a court reporter. Video recording is frequently used for expert witnesses and trial preservation depositions. The primary purpose of videotaping is to preserve not only the witness's words but also the witness's demeanor, appearance, tone of voice, and body language. Video testimony can be especially persuasive when presented at trial or during settlement negotiations because it allows viewers to observe the witness much as

they would in a courtroom.

Platforms such as Zoom and Microsoft Teams have made remote depositions increasingly common. A remote deposition is conducted through videoconferencing technology rather than with all participants physically present in the same location. The purpose of a remote deposition is the same as that of a traditional in-person deposition – to obtain sworn testimony and gather information – but in a more cost-effective and convenient manner. Remote depositions reduce travel expenses, improve scheduling flexibility, and allow participants to attend from different geographic locations. However, they often require additional planning regarding technology, exhibit management, and witness verification.



Figure 5.1.2: Remote deposition. (Created on Gemini)

Limits on Depositions

Although depositions are one of the broadest discovery tools available in civil litigation, they are not unlimited. Wisconsin's discovery rules are designed to balance a party's need for information against the burden and expense of obtaining it. As a result, attorneys may not use depositions to engage in unnecessary, repetitive, or disproportionately burdensome discovery. Under Wisconsin's general discovery rules, parties may obtain discovery regarding any non-privileged matter that is relevant to a party's claim or defense and proportional to the needs of the case. Even if information is relevant, a court may limit discovery when the burden or expense of obtaining the information outweighs its likely benefit. Similarly, a court may restrict discovery that is cumulative, duplicative, or obtainable from a more convenient, less burdensome, or less expensive source. Wis. Stat. §804.01 (2025).

Wisconsin also places specific numerical limits on depositions. Unless the parties agree otherwise or the court grants additional discovery, a party is generally limited to a reasonable number of depositions, not exceeding ten depositions. In addition, an individual deposition may not exceed seven hours in duration. A court may permit additional depositions or additional examination time when warranted by the circumstances of the case. For example, a complex commercial dispute involving numerous witnesses may justify more extensive discovery than a routine negligence action. Wis. Stat. §804.045 (2025).

Paralegals should be aware of these limitations when developing discovery plans and scheduling depositions. Tracking the number of depositions taken, monitoring deposition length, and understanding the proportionality requirements of Wisconsin's discovery rules can help ensure compliance with statutory requirements and avoid unnecessary discovery disputes.

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5.2: Pre-Deposition Planning and Preparation

Effective depositions begin long before the witness is sworn in. Careful planning and organization are essential to ensure that the deposition achieves its intended purpose and that all procedural requirements are satisfied. During the pre-deposition phase, attorneys develop strategy, identify witnesses and exhibits, coordinate scheduling, and prepare the documents necessary to conduct the examination. Paralegals play a central role in these efforts by managing logistics, organizing information, and ensuring that important deadlines and procedural requirements are met.

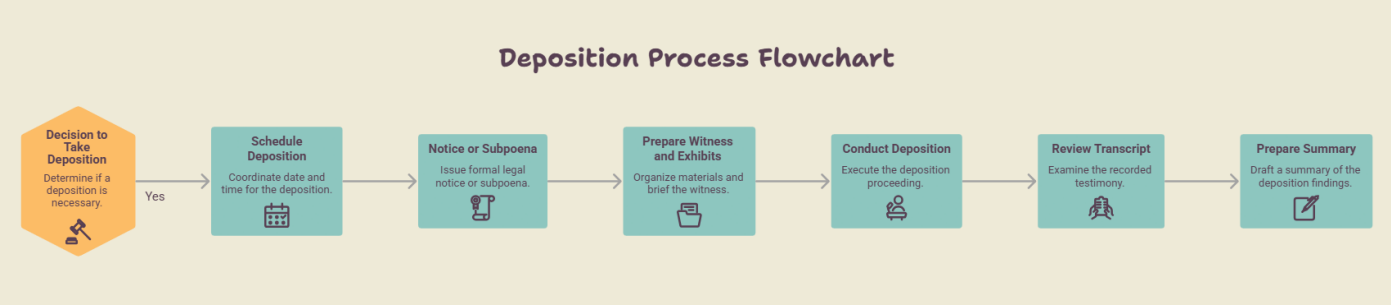


Figure 5.2.1: Deposition Process Flowchart (Created in Napkin by Beth Pless. Accessible version).

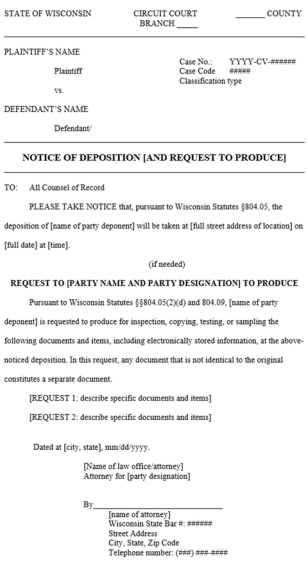
Deposition Logistics

Once the attorney decides to take a deposition, the parties must coordinate a date, time, and location. Scheduling can be a significant undertaking, particularly when multiple attorneys, witnesses, experts, court reporters, and videographers must be available simultaneously. In addition to coordinating availability, arrangements must be made for logistical details such as reserving conference rooms, hiring court reporters, securing videographers, and arranging interpreters when necessary. Increasingly, depositions are conducted remotely through videoconferencing platforms such as Zoom or Microsoft Teams. Remote depositions require additional planning to ensure reliable technology, secure document sharing, participant access, and procedures for marking and handling exhibits electronically.

One of the paralegal's most important responsibilities is calendaring deadlines related to notices, subpoenas, witness preparation sessions, document production, and deposition dates. Careful deadline management helps ensure compliance with court rules and reduces the risk of costly scheduling errors. Paralegals are also responsible for coordinating logistical arrangements. These tasks often include communicating with opposing counsel, scheduling conference rooms, confirming witness attendance, retaining court reporters and videographers, arranging remote-deposition technology, and distributing exhibits or deposition links to participants.

Deposition Documents

Once the logistical details have been finalized, the next step is to provide formal notice of the deposition. When the deponent is a party to the litigation, this is accomplished through a notice of deposition. The notice informs the parties of the date, time, and location of the deposition and identifies the person to be examined. It also provides notice of any requests for documents to be produced at the deposition and may specify whether the testimony will be recorded by video in addition to stenographic transcription. Notices are typically served by mailing to the opposing party's attorney. Careful attention must be paid to applicable procedural rules regarding the timing and service of deposition notices. Failure to provide proper notice may result in objections, scheduling disputes, or the need to reschedule the deposition. Paralegals are often responsible for preparing draft notices, obtaining attorney approval, serving the notices, and maintaining proof of service in the case file. Wis. Stat. §804.05 (2025).



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME
Plaintiff
vs.
DEFENDANT'S NAME
Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

NOTICE OF DEPOSITION [AND REQUEST TO PRODUCE]

TO: All Counsel of Record

PLEASE TAKE NOTICE that, pursuant to Wisconsin Statutes §804.05, the deposition of [name of party deponent] will be taken at [full street address of location] on [full date] at [time].

(if needed)

REQUEST TO [PARTY NAME AND PARTY DESIGNATION] TO PRODUCE

Pursuant to Wisconsin Statutes §§804.05(2)(d) and 804.09, [name of party deponent] is requested to produce for inspection, copying, testing, or sampling the following documents and items, including electronically stored information, at the above-noticed deposition. In this request, any document that is not identical to the original constitutes a separate document.

[REQUEST 1: describe specific documents and items]

[REQUEST 2: describe specific documents and items]

Dated at [city, state], mm/dd/yyyy.

[Name of law office/attorney]
Attorney for [party designation]

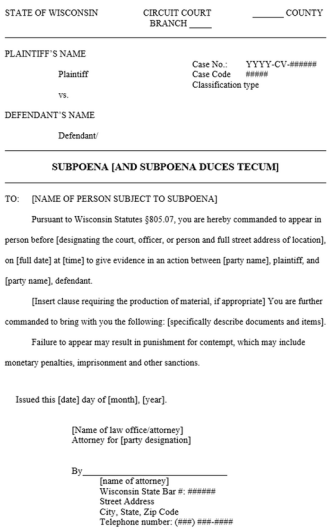
By:_____
[name of attorney]
Wisconsin State Bar #: ######
Street Address
City, State, Zip Code
Telephone number: (###) ###-####

Figure 5.2.2: Sample Notice of Deposition template (Beth Pless).

For non-party witnesses, attendance at a deposition generally cannot be compelled by a notice of deposition alone. Instead, the witness must be served with a subpoena requiring the witness to appear and testify. A subpoena for testimony, sometimes referred to as a *subpoena ad testificandum*, directs the witness to appear and provide testimony under oath. A *subpoena duces tecum* requires the witness to produce designated documents, electronically stored information, or other tangible evidence, either in conjunction with testimony or, in some circumstances, without requiring the witness's appearance. Consequently, once a non-party witness has been identified, the paralegal must prepare the appropriate subpoena and ensure that all procedural requirements have been satisfied.

As with notices of deposition, careful attention must be paid to the contents of the subpoena. The subpoena should accurately identify the witness, specify the date, time, and location of the deposition, and clearly describe any documents or materials requested. Wisconsin statutes prescribe the form of subpoena to be used, and failure to comply with statutory requirements may result in objections or challenges to the subpoena's enforceability. *Wis. Stat. § 804.07 (2025)*.[1]

Proper service of the subpoena is equally important. A subpoena that has not been properly served may be unenforceable, preventing the party from compelling the witness's attendance or production of documents. In Wisconsin, a subpoena may be served by exhibiting and reading it to the witness, by delivering a copy to the witness, or by leaving a copy at the witness's usual place of abode. Wis. Stat. §885.03 (2025). In addition, the statutory witness fee and mileage allowance required by Wis. Stat. §814.67 (2025) must accompany the subpoena. Wis. Stat. §885.06 (2025).



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

SUBPOENA [AND SUBPOENA DUCES TECUM]

TO: [NAME OF PERSON SUBJECT TO SUBPOENA]

Pursuant to Wisconsin Statutes §805.07, you are hereby commanded to appear in person before [designating the court, officer, or person and full street address of location], on [full date] at [time] to give evidence in an action between [party name], plaintiff, and [party name], defendant.

[Insert clause requiring the production of material, if appropriate] You are further commanded to bring with you the following: [specifically describe documents and items].

Failure to appear may result in punishment for contempt, which may include monetary penalties, imprisonment and other sanctions.

Issued this [date] day of [month], [year].

[Name of law office/attorney]
Attorney for [party designation]

By_____
[name of attorney]
Wisconsin State Bar #: ######
Street Address
City, State, Zip Code
Telephone number: (###) ###-####

Figure 5.2.3: Sample Subpoena template. (Beth Pless)

Paralegals frequently prepare notices of deposition and subpoenas, arrange for service, track service deadlines, and maintain records documenting compliance. Careful exhibit preparation can significantly affect the effectiveness of the examination.

Exhibit and Witness Preparation

Shortly before the deposition is scheduled to take place, the legal team gathers, organizes, and reviews documentary evidence relating to the anticipated deposition testimony. Any items the attorney may wish to use during a deposition to refresh a witness's memory, establish facts, authenticate documents, or challenge inconsistent testimony are copied and prepared so that they are readily accessible as an exhibit to the deposition. Document organization is a critical paralegal responsibility. Paralegals review discovery materials, maintain exhibit files, prepare document summaries, and ensure that attorneys can quickly locate information needed during the deposition. Well-organized files can significantly improve the efficiency and effectiveness of witness examinations.

If the deponent is the client or a witness whose testimony is likely to be favorable to the client's case, the attorney and paralegal typically meet with them before the deposition to explain the process, review relevant documents, and discuss areas likely to be addressed during questioning. Preparation helps reduce anxiety, ensures that the witness understands the procedures involved, and allows counsel to identify potential issues that may arise during the examination. Witness preparation must be conducted ethically. Attorneys and paralegals may explain procedures, review documents, and discuss factual information, but they may not coach witnesses to provide false testimony or alter their recollection of events. Paralegals must also avoid engaging in the unauthorized practice of law by providing legal advice independently of attorney supervision.

Paralegals frequently assist with witness preparation by organizing documents, assembling witness files, preparing timelines and chronologies, scheduling preparation sessions, and ensuring that all relevant materials are available for review. Chronologies can be particularly valuable because they help both the attorney and the witness understand the sequence of events and identify gaps or inconsistencies in the evidence. The attorney may request the paralegal to compile a deposition notebook, which serves as a comprehensive reference tool during the examination. A deposition notebook may contain pleadings, witness information, key documents, exhibit lists, chronologies, outlines, prior discovery responses, and other materials relevant to the deposition. A well-prepared notebook allows the attorney to focus on questioning the witness rather than searching for information, contributing significantly to the success of the deposition.

1. Wisconsin statutes provide a required form for subpoenas. Wis. Stat. §805.07 (2025).

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5.3: Conducting the Deposition

When a party receives a notice of deposition, that party must appear. For non-parties, the notice must be accompanied by a subpoena *ad testificandum* to compel attendance. A subpoena *duces tecum* may also be issued to require the non-party to produce specified documents or items at the deposition. Once the deposition has been scheduled and all necessary preparations have been completed, the parties proceed with the examination of the witness. Although depositions are generally less formal than courtroom proceedings, they follow established procedures designed to create an accurate and reliable record. Attorneys, court reporters, witnesses, and paralegals each play important roles in ensuring that the deposition is conducted effectively and in accordance with applicable procedural rules.

Before any substantive questioning begins, the deposition must be formally opened. The court reporter places the witness under oath, requiring the witness to swear or affirm that all testimony will be truthful. During the deposition, testimony is taken under oath and recorded for possible use later in the litigation. Because deposition testimony is given under oath, knowingly providing false testimony may subject a witness to penalties for perjury.

Following the administration of the oath, the questioning attorney typically establishes preliminary information for the record, including the witness's name, address, employment information, and other identifying details. Attorneys frequently provide basic instructions concerning the deposition process, such as asking the witness to answer verbally rather than with gestures, avoid speaking over another participant, request clarification when necessary, and take sufficient time to understand each question before responding. These ground rules help ensure the creation of a clear and accurate transcript.

The examination itself consists of a series of questions posed to the witness under oath. In most depositions, the attorney who requested the deposition conducts the initial examination. Questions may address the witness's background, involvement in the events at issue, knowledge of relevant facts, and the authenticity of documents and other evidence. After the initial examination, opposing counsel may conduct cross-examination or ask follow-up questions. Additional questioning may be used to clarify testimony, challenge certain statements, explore omissions, or develop facts favorable to the attorney's client. In some cases, attorneys may engage in several rounds of follow-up questioning before concluding the deposition.

Although depositions occur outside the courtroom, attorneys may still make objections during the examination. Most deposition objections are made to preserve issues for later consideration by the court rather than to immediately exclude testimony. The objection process also serves an important function in preserving issues for trial. By placing objections on the record during the deposition, attorneys ensure that potential disputes regarding admissibility or procedure can be addressed later by the court if necessary. In limited circumstances, an attorney may instruct a witness not to answer a question. Such instructions are generally reserved for situations involving privilege, court orders, or other recognized legal grounds.

Exhibits may be used to refresh a witness's recollection, authenticate documents, establish facts, or challenge inconsistent statements. Before an exhibit is discussed, it is typically marked with an exhibit number or letter for identification purposes. The attorney then provides the document to the witness and asks questions concerning its contents, authenticity, or relevance. Because exhibits become part of the deposition record, accurate identification and tracking are essential.

Paralegals are sometimes present as members of the litigation team. Although they do not question the witness or make legal objections, they often provide valuable support by managing exhibits, tracking testimony, organizing documents, and assisting with logistical or technological issues that arise during the deposition. Paralegals also frequently engage in note-taking and testimony tracking. Detailed notes may identify important admissions, inconsistencies, follow-up issues, references to additional documents, and testimony that may later support motions or trial preparation. These notes often become valuable resources when reviewing the transcript after the deposition. Paralegals can also provide valuable assessments of a witness's demeanor and credibility. Throughout the deposition, they may observe the witness's body language, tone of voice, level of confidence, responsiveness, and reactions to particular lines of questioning. Such observations may help the litigation team evaluate how the witness is likely to be perceived by a judge or jury and identify areas requiring further investigation, witness preparation, or impeachment at trial.

As technology becomes increasingly important in litigation, paralegals are often responsible for providing technology support, particularly in remote depositions. Tasks may include managing videoconferencing platforms, troubleshooting technical problems, coordinating electronic exhibit presentation, and monitoring participant access.

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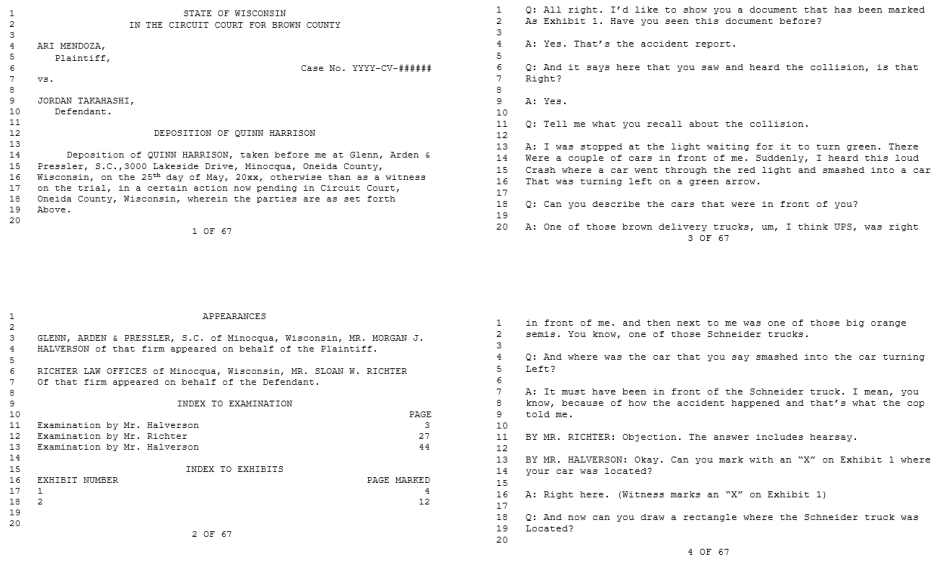
5.4: Post-Deposition Review and Follow-Up

The conclusion of a deposition does not mark the end of the deposition process. Instead, it begins a critical phase of review, analysis, and follow-up. The testimony obtained during a deposition must be carefully examined to identify important admissions, evaluate witness credibility, determine whether additional discovery is necessary, and prepare the case for motion practice, settlement negotiations, or trial. Much of this work falls to paralegals, whose organizational and analytical skills are essential to transforming hours of testimony into useful litigation tools.

The Deposition Transcript and Exhibits

After the deposition concludes, the court reporter prepares a written transcript containing a verbatim record of the questions, answers, objections, and other statements made during the proceeding. Once completed, the transcript is provided to the attorneys and, in many cases, to the witness for review. The witness may have the opportunity to review the transcript to ensure that the testimony was accurately transcribed and to identify any errors. During this review process, attorneys and paralegals should carefully compare the transcript with deposition notes, exhibits, and other evidence in the case. Particular attention should be given to admissions, inconsistencies, references to additional documents, and testimony that may support or undermine a party's claims or defenses.



STATE OF WISCONSIN
IN THE CIRCUIT COURT FOR BROWN COUNTY

ARI MENDOZA,
Plaintiff,

Case No. YYYY-CV-######

vs.

JORDAN TAKAHASHI,
Defendant.

DEPOSITION OF QUINN HARRISON

Deposition of QUINN HARRISON, taken before me at Glenn, Arden & Pressler, S.C.,3000 Lakeside Drive, Minocqua, Oneida County, Wisconsin, on the 25th day of May, 20xx, otherwise than as a witness on the trial, in a certain action now pending in Circuit Court, Oneida County, Wisconsin, wherein the parties are as set forth Above.

1 OF 67

Q: All right. I'd like to show you a document that has been marked As Exhibit 1. Have you seen this document before?

A: Yes. That's the accident report.

Q: And it says here that you saw and heard the collision, is that Right?

A: Yes.

Q: Tell me what you recall about the collision.

A: I was stopped at the light waiting for it to turn green. There Were a couple of cars in front of me. Suddenly, I heard this loud Crash where a car went through the red light and smashed into a car That was turning left on a green arrow.

Q: Can you describe the cars that were in front of you?

A: One of those brown delivery trucks, um, I think UPS, was right

3 OF 67

APPEARANCES

GLENN, ARDEN & PRESSLER, S.C. of Minocqua, Wisconsin, MR. MORGAN J. HALVERSON of that firm appeared on behalf of the Plaintiff.

RICHTER LAW OFFICES of Minocqua, Wisconsin, MR. SLOAN W. RICHTER Of that firm appeared on behalf of the Defendant.

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in front of me. and then next to me was one of those big orange semis. You know, one of those Schneider trucks.

Q: And where was the car that you say smashed into the car turning Left?

A: It must have been in front of the Schneider truck. I mean, you know, because of how the accident happened and that's what the cop told me.

BY MR. RICHTER: Objection. The answer includes hearsay.

BY MR. HALVERSON: Okay. Can you mark with an "X" on Exhibit 1 where your car was located?

A: Right here. (Witness marks an "X" on Exhibit 1)

Q: And now can you draw a rectangle where the Schneider truck was Located?

4 OF 67

Figure 5.4.1: Sample Deposition transcript excerpt (Beth Pless)

If errors are identified in the transcript, corrections may be made through an errata sheet. An errata sheet is a document that lists the page and line numbers to be corrected, the proposed changes, and the reasons for the changes. Although errata sheets provide an opportunity to correct transcription errors or clarify testimony, they are not intended to allow material alteration of prior testimony. Courts may scrutinize significant changes, particularly when they affect critical facts or appear inconsistent with the witness's original statements. Because procedural rules often impose strict deadlines for reviewing and signing deposition transcripts, litigation teams must carefully monitor the timing requirements associated with errata sheets. Missing a deadline may result in the witness losing the opportunity to make corrections. In Wisconsin, this process generally must be completed within 30 days after the transcript is provided to the deponent. Wis. Stat. §804.05(6) (2025).

All exhibits and related materials must be properly organized and maintained. Exhibit files should be reviewed to confirm that all marked exhibits have been collected, labeled correctly, and preserved in the case file. Any electronic exhibits should be stored securely and in a manner that allows easy retrieval. Case management systems should also be updated to reflect completed depositions, witness information, transcript availability, exhibit inventories, and follow-up tasks. Accurate record maintenance helps ensure that important information can be located quickly during later stages of litigation.

Preserving the deposition record is particularly important because transcripts, exhibits, video recordings, certifications, and

related materials may be used months or even years after the deposition was taken. Careful organization reduces the risk of losing critical evidence and facilitates efficient trial preparation.

Evaluating the Deposition Testimony

A deposition transcript must be analyzed, not merely reviewed, to determine what impact it may have on the case. Particular attention should be paid to admissions made by parties or witnesses. Statements acknowledging facts, accepting responsibility, or confirming the authenticity of documents may become powerful evidence later in the litigation. Likewise, inconsistent statements may provide valuable impeachment material if a witness changes testimony at trial.

A critical aspect of post-deposition analysis is comparing the witness's testimony with information obtained from other sources during discovery. Deposition testimony should be evaluated alongside interrogatory answers, responses to requests for admission, document productions, medical records, business records, electronic communications, expert reports, and prior witness statements. This comparison helps the litigation team determine whether the witness's testimony is consistent with the existing evidence and identify any discrepancies that may affect the credibility of the witness or the strength of a party's claims or defenses.

Inconsistencies between deposition testimony and other evidence often become important litigation tools. For example, a witness may provide testimony that conflicts with prior discovery responses, contemporaneous business records, emails, text messages, medical records, or previously produced documents. Such contradictions may support additional discovery, provide impeachment material for trial, or serve as the basis for dispositive motions. Conversely, testimony that is corroborated by multiple sources of evidence may strengthen a party's factual position and increase the likelihood of a favorable settlement or trial outcome.

The litigation team should also assess the strengths and weaknesses revealed during the deposition. A witness who appeared credible and persuasive may strengthen a party's position, while a witness whose testimony was inconsistent, evasive, or unsupported by other evidence may create opportunities for cross-examination and impeachment.

Deposition Summaries, Abstracts, and Key Testimony Digests

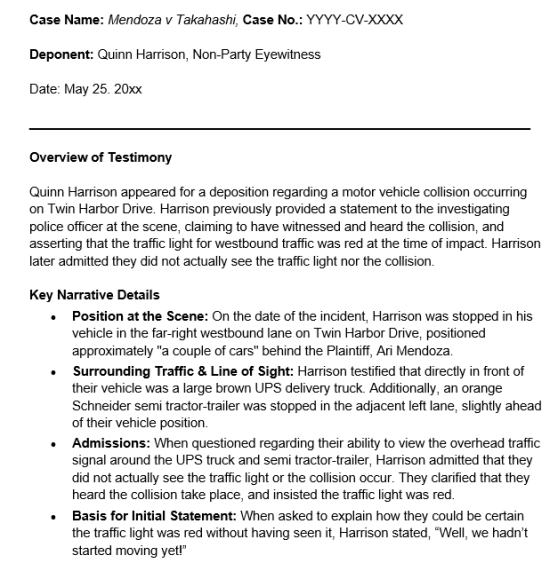
Depositions frequently generate lengthy transcripts containing hundreds of pages of testimony. Because it is often impractical for attorneys to repeatedly review entire transcripts throughout the litigation process, paralegals are commonly asked to prepare documents that condense, organize, and analyze deposition testimony. The three most common post-deposition work products are the deposition summary, deposition abstract, and key testimony digest. Although each serves a different purpose, all three are designed to make deposition testimony more accessible and useful during discovery, motion practice, settlement negotiations, and trial preparation.

Deposition Summary

A deposition summary is a condensed overview of a witness's deposition testimony that allows attorneys and other members of the litigation team to quickly review the substance of the deposition without reading the entire transcript. Unlike more detailed analytical documents, a deposition summary focuses on providing a clear narrative account of the witness's testimony, including the major topics discussed, key facts established, and important admissions or disputed issues.

The preparation process begins with a thorough review of the deposition transcript and any notes taken during the examination. The paralegal identifies the primary subjects addressed by the witness, the most significant facts revealed during the testimony, and any statements that may affect the claims, defenses, or overall strategy of the case. The testimony is then organized into a clear and accessible format, either chronologically or by issue. Issue-oriented summaries typically group testimony under headings such as background information, liability, causation, damages, affirmative defenses, and expert opinions. The organizational approach should be tailored to the attorney's preferences and the objectives of the litigation.

Although a summary is intended to be concise, important testimony should be supported by page and line citations so that attorneys can easily locate and review the original transcript when necessary. Significant admissions, credibility issues, contradictions, and references to key exhibits should be noted, but the summary should remain objective and avoid argument or analysis.



Case Name: *Mendoza v Takahashi,* **Case No.:** YYYY-CV-XXXX

Deponent: Quinn Harrison, Non-Party Eyewitness

Date: May 25. 20xx

Overview of Testimony

Quinn Harrison appeared for a deposition regarding a motor vehicle collision occurring on Twin Harbor Drive. Harrison previously provided a statement to the investigating police officer at the scene, claiming to have witnessed and heard the collision, and asserting that the traffic light for westbound traffic was red at the time of impact. Harrison later admitted they did not actually see the traffic light nor the collision.

Key Narrative Details

- **Position at the Scene:** On the date of the incident, Harrison was stopped in his vehicle in the far-right westbound lane on Twin Harbor Drive, positioned approximately "a couple of cars" behind the Plaintiff, Ari Mendoza.
- **Surrounding Traffic & Line of Sight:** Harrison testified that directly in front of their vehicle was a large brown UPS delivery truck. Additionally, an orange Schneider semi tractor-trailer was stopped in the adjacent left lane, slightly ahead of their vehicle position.
- **Admissions:** When questioned regarding their ability to view the overhead traffic signal around the UPS truck and semi tractor-trailer, Harrison admitted that they did not actually see the traffic light or the collision occur. They clarified that they heard the collision take place, and insisted the traffic light was red.
- **Basis for Initial Statement:** When asked to explain how they could be certain the traffic light was red without having seen it, Harrison stated, "Well, we hadn't started moving yet!"

Figure 5.4.2: Sample Deposition Summary excerpt (Beth Pless)

A well-prepared deposition summary serves as an efficient reference tool throughout the litigation. By presenting the witness's testimony in an organized and accessible format, it assists attorneys in evaluating the case, preparing motions and discovery responses, planning additional discovery, assessing settlement opportunities, and preparing for trial. While generally less detailed than a deposition abstract or key testimony digest, the deposition summary remains one of the most commonly used and valuable litigation documents prepared by paralegals.

Deposition Abstract

A deposition abstract differs from a deposition summary in both purpose and organization. Whereas a summary provides an overview of the witness's testimony, an abstract is designed to help attorneys quickly locate important testimony within the transcript. Rather than following the order of the examination, testimony is reorganized by issue or subject matter and supported by detailed page and line citations.

The primary purpose of an abstract is to function as a research and trial preparation tool. By grouping testimony by topic, attorneys can quickly identify all testimony relating to a particular issue without searching through hundreds of pages of transcript. Common categories include liability, causation, damages, affirmative defenses, expert opinions, witness credibility, and document authentication.

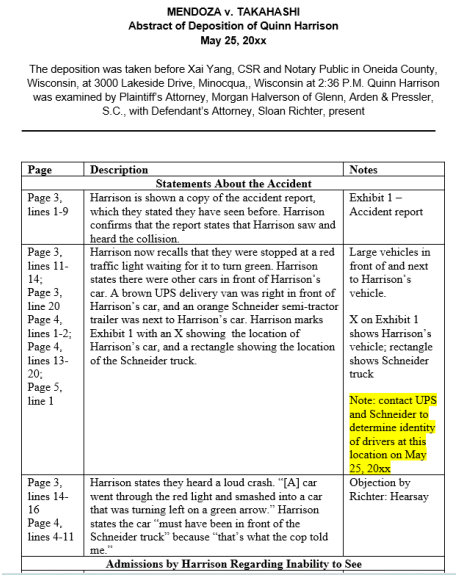
Attorneys use deposition abstracts to:

- Quickly locate important testimony;
- Identify admissions and impeachment material;
- Compare testimony among different witnesses;
- Support motion practice;
- Prepare witnesses for trial;
- Develop settlement strategy; and
- Create trial outlines and examination plans.

The process of preparing an abstract begins with a careful review of the entire transcript. As the transcript is reviewed, the paralegal identifies significant testimony, including key factual statements, admissions, testimony supporting or undermining claims and defenses, and statements affecting witness credibility. This testimony is then grouped by issue rather than chronology. Common categories may include liability, causation, damages, affirmative defenses, expert opinions, witness credibility, or document authentication.

Each abstract entry should contain concise statements of testimony accompanied by precise page and line citations to the transcript. These citations are critical because they enable attorneys to immediately locate and verify the testimony being summarized. Accurate citations are also essential when deposition testimony is later used in motions, settlement negotiations,

witness examinations, or trial. As part of this process, the paralegal should also note contradictions, inconsistencies, references to additional documents or witnesses, and other matters that may warrant further analysis.



MENDOZA v. TAKAHASHI
Abstract of Deposition of Quinn Harrison
May 25, 20xx

The deposition was taken before Xai Yang, CSR and Notary Public in Oneida County, Wisconsin, at 3000 Lakeside Drive, Minocqua,, Wisconsin at 2:36 P.M. Quinn Harrison was examined by Plaintiff's Attorney, Morgan Halverson of Glenn, Arden & Pressler, S.C., with Defendant's Attorney, Sloan Richter, present

Page	Description	Notes
	Statements About the Accident	
Page 3, lines 1-9	Harrison is shown a copy of the accident report, which they stated they have seen before. Harrison confirms that the report states that Harrison saw and heard the collision.	Exhibit 1 – Accident report
Page 3, lines 11-14; Page 3, line 20 Page 4, lines 1-2; Page 4, lines 13-20; Page 5, line 1	Harrison now recalls that they were stopped at a red traffic light waiting for it to turn green. Harrison states there were other cars in front of Harrison's car. A brown UPS delivery van was right in front of Harrison's car, and an orange Schneider semi-tractor trailer was next to Harrison's car. Harrison marks Exhibit 1 with an X showing the location of Harrison's car, and a rectangle showing the location of the Schneider truck.	Large vehicles in front of and next to Harrison's vehicle. X on Exhibit 1 shows Harrison's vehicle; rectangle shows Schneider truck Note: contact UPS and Schneider to determine identity of drivers at this location on May 25, 20xx
Page 3, lines 14-16 Page 4, lines 4-11	Harrison states they heard a loud crash. "[A] car went through the red light and smashed into a car that was turning left on a green arrow." Harrison states the car "must have been in front of the Schneider truck" because "that's what the cop told me."	Objection by Richter: Hearsay
	Admissions by Harrison Regarding Inability to See	

Figure 5.4.3: Sample Deposition Abstract excerpt. (Beth Pless)

Effective abstracts go beyond merely organizing testimony. The paralegal should compare the witness's testimony with other evidence developed during the litigation, including pleadings, interrogatory answers, requests for admission, document productions, medical records, business records, expert reports, and other witness testimony. This comparison often reveals corroborating evidence, inconsistencies, impeachment material, and potential areas for additional discovery.

Well-prepared deposition abstracts often become indispensable working documents throughout the litigation. By distilling lengthy transcripts into organized, issue-oriented summaries, they allow attorneys to quickly access critical testimony, evaluate the strengths and weaknesses of the case, prepare motions and trial materials, and make informed decisions during settlement negotiations.

Key Testimony Digest

In complex cases, attorneys may ask paralegals to prepare a key testimony digest. Of the three post-deposition documents, the key testimony digest is the most analytical. Rather than simply summarizing testimony or organizing it by issue, the digest evaluates the significance of the testimony and its potential impact on the case. The digest focuses on testimony likely to affect litigation strategy, motion practice, settlement negotiations, or trial preparation.

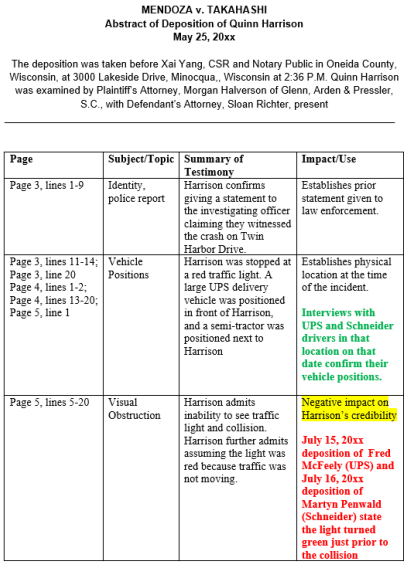
Like a deposition abstract, a key testimony digest is generally organized by issue rather than chronology. Common categories include liability, causation, damages, affirmative defenses, witness credibility, expert opinions, disputed facts, and document authentication. Within each category, important testimony is reported concisely and supported by transcript citations. The distinguishing feature of a key testimony digest is its analytical component. Rather than merely reporting the witness's testimony, this section evaluates its significance to the case.

After identifying significant testimony, the paralegal evaluates its significance by comparing it with other documents and evidence gathered during discovery, such as pleadings, interrogatory answers, requests for admission, document productions, business and medical records, expert reports, and the testimony of other witnesses. This analysis helps identify corroborating evidence, credibility concerns, factual disputes, and weaknesses in the proof. It may also reveal areas where the witness's testimony conflicts with documentary evidence or prior statements, creating potential impeachment opportunities. In addition, the analysis should identify testimony that strengthens or undermines a party's claims or defenses and note any matters warranting further investigation or discovery.

A key testimony digest typically highlights:

- Significant admissions by parties or witnesses;

- Credibility concerns;
- Inconsistencies with documents, discovery responses, or other witness testimony;
- Unresolved factual disputes;
- Issues requiring additional discovery or investigation; and
- Testimony likely to influence motion practice, settlement negotiations, or trial strategy.



MENDOZA v. TAKAHASHI
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Page	Subject/Topic	Summary of Testimony	Impact/Use
Page 3, lines 1-9	Identity, police report	Harrison confirms giving a statement to the investigating officer claiming they witnessed the crash on Twin Harbor Drive.	Establishes prior statement given to law enforcement.
Page 3, lines 11-14; Page 3, line 20 Page 4, lines 1-2; Page 4, lines 13-20; Page 5, line 1	Vehicle Positions	Harrison was stopped at a red traffic light. A large UPS delivery vehicle was positioned in front of Harrison, and a semi-tractor was positioned next to Harrison	Establishes physical location at the time of the incident. **Interviews with UPS and Schneider drivers in that location on that date confirm their vehicle positions.**
Page 5, lines 5-20	Visual Obstruction	Harrison admits inability to see traffic light and collision. Harrison further admits assuming the light was red because traffic was not moving.	Negative impact on Harrison's credibility **July 15, 20xx deposition of Fred McFeely (UPS) and July 16, 20xx deposition of Martyn Penwald (Schneider) state the light turned green just prior to the collision**

Figure 5.4.4: Sample Key Testimony Digest excerpt (Beth Pless)

A useful approach is to think of a key testimony digest as answering four questions: (1) What important facts did the witness establish? (2) What admissions did the witness make? (3) What testimony conflicts with other evidence or prior statements? (4) How does this testimony affect settlement, motion practice, or trial strategy? If a paralegal can answer those questions concisely and provide accurate transcript citations, the digest becomes a highly effective litigation tool rather than merely a shortened version of the transcript. This analysis is the most valuable portion of the digest because it helps attorneys quickly assess how the deposition affects the overall case strategy.

The table below compares the purpose, amount of detail, and level of analysis of these post-deposition documents.

Table 5.4.1: Comparison of deposition summaries, deposition abstracts, and key testimony digests

Document	Primary Purpose	Amount of Detail	Level of Analysis
Deposition Summary	Provide an overview of testimony	Moderate	Low
Deposition Abstract	Organize and locate significant testimony	High	Moderate
Key Testimony Digest	Evaluate the significance of testimony	High	High

In simplest terms, a deposition summary tells the attorney what happened during the deposition, a deposition abstract helps the attorney find important testimony, and a key testimony digest helps the attorney understand how the testimony affects the case. For that reason, key testimony digests are often the most valuable work product in complex litigation. While summaries and abstracts organize information, a digest transforms testimony into actionable litigation analysis.

Follow-Up Discovery and Investigation

Deposition testimony frequently identifies the need for additional discovery. Witnesses may refer to previously undisclosed documents, mention individuals with relevant knowledge, describe events not previously known to the parties, or provide testimony that raises new factual or legal questions. As a result, one of the most important aspects of post-deposition analysis is determining whether further investigation or discovery is necessary.

For example, a witness may testify about emails, text messages, contracts, medical records, photographs, personnel files, or other documents that have not yet been produced in discovery. Such testimony may lead to supplemental requests for production, subpoenas for records, or motions to compel. Similarly, a witness may identify additional individuals who possess relevant information, creating the need for additional depositions, witness interviews, or written discovery. In some cases, deposition testimony may also reveal the existence of experts, consultants, insurance information, or electronic records that warrant further examination.

The deposition may also expose inconsistencies or gaps in the evidence that require follow-up. A witness's testimony may conflict with prior interrogatory responses, requests for admission, business records, medical records, or the testimony of other witnesses. These discrepancies often require additional investigation to determine which version of the facts is supported by the evidence. Follow-up discovery may therefore be necessary to obtain clarification, corroborate testimony, or develop impeachment material for later use in motions or at trial.

In addition to identifying new sources of information, deposition testimony can help refine the overall discovery strategy. Information obtained during a deposition may suggest new theories of liability or defense, reveal previously overlooked issues, narrow disputed facts, or establish that certain lines of inquiry no longer need to be pursued. Consequently, the litigation team should carefully evaluate whether the testimony changes the direction or scope of the remaining discovery.

Paralegals play a significant role in this process. They are often responsible for reviewing deposition transcripts and notes, identifying references to additional documents or witnesses, updating discovery plans, and preparing follow-up task lists for the attorney. Many paralegals create investigation memos, witness lists, discovery charts, or case management updates to ensure that all follow-up opportunities identified during the deposition are properly tracked and addressed. Careful post-deposition review helps ensure that important leads are not overlooked and that the litigation team obtains the information necessary to fully develop the case.

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5.5: Key Takeaways

Utilizing Depositions in a Civil Action

- Depositions are one of the most important discovery tools in civil litigation because they allow attorneys to obtain sworn testimony, evaluate witness credibility, preserve evidence, and assess the strengths and weaknesses of a case before trial.
- Unlike most other discovery methods, depositions may be taken from both parties and non-parties, making them a versatile tool for gathering information and developing litigation strategy.
- Depositions may be classified according to their purpose, such as discovery depositions, trial preservation depositions, and perpetuation depositions, or according to the type of witness being examined, such as parties, fact witnesses, experts, treating physicians, and corporate representatives.
- Wisconsin permits perpetuation depositions in limited circumstances when testimony may be lost before litigation can proceed, but such depositions require a verified petition and court authorization.
- Organizations may be deposed through designated representatives who testify on behalf of the entity regarding specified topics, and that testimony may be binding on the organization.
- Depositions may be conducted in person, remotely through videoconferencing technology, or with video recording, depending on the needs of the case and the objectives of the parties.
- Although discovery rules allow broad inquiry, Wisconsin imposes limits on depositions through relevance, proportionality, and numerical restrictions, generally limiting parties to ten depositions of no more than seven hours each absent agreement or court order.

Pre-Deposition Planning and Preparation

- Effective deposition practice begins with careful planning. Attorneys and paralegals must identify the purpose of the deposition, determine the issues to be explored, and develop a strategy for obtaining useful testimony.
- Paralegals play a central role in scheduling depositions, coordinating participants, calendaring deadlines, and ensuring compliance with procedural requirements.
- A notice of deposition is generally used to compel the attendance of a party, while a subpoena is used to compel the attendance of a non-party witness. A subpoena ad testificandum requires a witness to provide testimony, whereas a subpoena duces tecum requires a witness to produce designated documents or other evidence.
- Proper service of notices and subpoenas is essential because procedural defects may result in objections, delays, or the inability to compel attendance.
- Careful preparation of exhibits, witness files, chronologies, and deposition notebooks can significantly improve the efficiency and effectiveness of the deposition process.
- Witness preparation is an important part of deposition practice, but attorneys and paralegals must avoid coaching witnesses to provide false testimony or otherwise engaging in unethical conduct.

Conducting the Deposition

- During a deposition, the witness is placed under oath, questioned by counsel, and recorded by a court reporter, creating a formal record that may later be used in litigation.
- Attorneys may make objections during depositions to preserve issues for later review, even though most testimony is allowed to proceed and is not immediately excluded.
- Paralegals provide valuable support during depositions by managing exhibits, taking notes, monitoring testimony, assisting with technology, and observing witness demeanor and credibility.

Post-Deposition Review and Follow-Up

- The deposition transcript should be carefully reviewed after the deposition to identify admissions, inconsistencies, credibility concerns, and testimony that may support or undermine the claims and defenses in the case.
- Comparing deposition testimony with other discovery materials, documents, records, and witness statements is an essential part of evaluating the significance and reliability of the testimony.
- Errata sheets allow witnesses to correct transcription errors or make limited changes to their testimony, but they are not intended to permit substantial rewriting of sworn testimony.
- Paralegals frequently prepare deposition summaries, abstracts, and key testimony digests to make lengthy transcripts more useful and accessible to attorneys.
- A deposition summary provides an overview of the witness's testimony, a deposition abstract organizes significant testimony by issue and citation, and a key testimony digest analyzes the testimony's strategic significance to the case.
- Depositions often reveal the need for additional discovery, additional witnesses, supplemental document requests, or further investigation, making follow-up analysis an important part of the discovery process.
- Well-organized deposition records, exhibits, summaries, and analyses can become critical tools for settlement negotiations, motion practice, witness preparation, impeachment, and trial.

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5.6: Summary

Depositions are among the most powerful and frequently used discovery tools in civil litigation. By allowing attorneys to question witnesses under oath outside the courtroom, depositions serve multiple purposes, including gathering information, preserving testimony, evaluating credibility, authenticating evidence, and preparing for trial. Because deposition testimony often influences settlement negotiations, motion practice, and trial strategy, effective deposition practice is an essential litigation skill.

Depositions may be classified according to their purpose or the type of witness being examined. Discovery depositions are used primarily to obtain information and evaluate the merits of a case, while trial preservation and perpetuation depositions are designed to preserve testimony for future use. Witnesses who may be deposed include parties, fact witnesses, expert witnesses, treating physicians, and corporate representatives. Depositions may also be conducted remotely or recorded by video when appropriate.

Although depositions permit broad inquiry into relevant matters, they remain subject to limitations designed to prevent unnecessary expense, delay, and abuse of the discovery process. Wisconsin's discovery rules require that discovery be relevant and proportional to the needs of the case and impose limits on both the number and duration of depositions unless otherwise authorized by the court.

Successful depositions require extensive preparation. Before a deposition occurs, attorneys and paralegals must identify the objectives of the examination, coordinate scheduling, prepare notices and subpoenas, organize exhibits, and assist with witness preparation. Particular attention must be given to compliance with procedural requirements governing notices of deposition, subpoenas, service, and witness fees. Careful planning can significantly affect the effectiveness of the deposition and the quality of the testimony obtained.

Paralegals play a critical role throughout the pre-deposition process. Their responsibilities frequently include calendaring deadlines, coordinating logistics, organizing documents, preparing witness files, creating chronologies, maintaining exhibit files, and assembling deposition notebooks. These organizational functions help ensure that attorneys can focus on witness examination rather than administrative details.

During the deposition, the witness is placed under oath and questioned by counsel while a court reporter creates an official record of the proceedings. Attorneys may use exhibits, make objections, and conduct follow-up questioning as necessary to develop the factual record. The resulting testimony often becomes an important source of evidence during later stages of litigation.

Paralegals provide valuable support during depositions by managing exhibits, tracking testimony, taking notes, monitoring electronic presentations, and assisting with technological issues. Their observations regarding witness demeanor, credibility, and responsiveness can also assist attorneys in evaluating how a witness may be perceived by a judge or jury.

The work associated with a deposition continues after the examination ends. The litigation team must review the transcript, evaluate the significance of the testimony, compare the testimony to other evidence, and identify admissions, inconsistencies, and credibility concerns. Witnesses may review transcripts and submit corrections through errata sheets, subject to applicable procedural requirements and deadlines.

Paralegals frequently assist attorneys by preparing deposition summaries, abstracts, and key testimony digests. Each serves a different purpose. Summaries provide a concise overview of the testimony, abstracts organize important testimony by issue and citation, and key testimony digests analyze the significance of the testimony for litigation strategy. These documents transform lengthy transcripts into practical working tools that can be used throughout the case.

Deposition testimony often reveals the need for additional investigation and discovery. Witnesses may identify new documents, additional witnesses, inconsistencies in the evidence, or issues requiring further analysis. Careful post-deposition review helps ensure that these leads are pursued and that the litigation team continues to develop the strongest possible factual record.

Throughout the deposition process, paralegals serve as essential members of the litigation team. Their contributions to planning, document management, witness preparation, transcript analysis, and case organization help ensure that depositions are conducted efficiently and that the information obtained is effectively used in support of the client's case.

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Terms with Definitions

Corporate Representative Deposition: A deposition in which an organization designates one or more individuals to testify on its behalf regarding specified topics.

Court Reporter: The individual who administers the oath and creates the official verbatim record of deposition testimony.

Deponent: The person whose testimony is taken during a deposition.

Deposition: Sworn out-of-court testimony taken before a court reporter for discovery, evidentiary, or trial-preservation purposes.

Deposition Abstract: An organized compilation of important deposition testimony arranged by issue or subject matter and supported by precise transcript citations.

Deposition Notebook: A collection of documents, exhibits, pleadings, chronologies, and reference materials assembled to assist an attorney during a deposition.

Deposition Summary: A concise narrative overview of a witness's deposition testimony that highlights major topics and significant facts.

Discovery Deposition: A deposition conducted primarily to obtain information, evaluate witnesses, and develop litigation strategy.

Errata Sheet: A document used by a witness to identify and explain corrections to a deposition transcript.

Exhibit: A document, photograph, record, or other item used as evidence during a deposition.

Expert Witness Deposition: A deposition conducted to examine an expert's qualifications, opinions, methodologies, and conclusions.

Fact Witness Deposition: A deposition of a non-party witness who possesses personal knowledge of relevant events or facts.

Impeachment: The process of challenging a witness's credibility, often through prior inconsistent statements or contradictory evidence.

Key Testimony Digest: An analytical document that evaluates the significance of deposition testimony and its impact on litigation strategy.

Notice of Deposition: A document informing parties of the date, time, location, and details of a scheduled deposition.

Party Deposition: A deposition of a plaintiff, defendant, or other party to the litigation.

Perpetuation Deposition: A deposition taken before a lawsuit is filed to preserve testimony that may otherwise become unavailable.

Perjury: The crime of knowingly making a false statement while under oath.

Remote Deposition: A deposition conducted through videoconferencing technology rather than with all participants physically present in the same location.

Subpoena: A legal document requiring a person to appear for testimony, produce documents, or both.

Subpoena Ad Testificandum: A subpoena requiring a person to appear and give testimony.

Subpoena Duces Tecum: A subpoena requiring a person to produce documents, electronically stored information, or other tangible evidence.

Transcript: The official written record of deposition testimony prepared by the court reporter.

Treating Physician Deposition: A deposition of a healthcare provider concerning a patient's diagnosis, treatment, prognosis, and medical condition.

Trial Preservation Deposition: A deposition taken to preserve testimony for presentation at trial when a witness may be unavailable to testify in person.

Videotaped Deposition: A deposition recorded on video in addition to being transcribed by a court reporter.

Witness Preparation: The process of educating a witness about deposition procedures and reviewing relevant facts and documents before testimony.

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5.8: References

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6: CIVIL DISCOVERY - REQUESTS FOR ADMISSION

6.0: Introduction

6.1: Utilizing Written Requests for Admission in a Civil Action

6.2: Drafting Written Requests for Admission

6.3: Responding to Written Requests for Admission

6.4: The Paralegal's Role in Written Requests for Admission

6.5: Key Takeaways

6.6: Summary

6.7: Glossary

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6.0: Introduction

Competency: Draft documents relating to requests for admission for a civil cause of action.

Learning Objectives

- Categorize the facts, opinions, and legal theories that are appropriate subjects for written requests for admission
- Describe best practices for drafting effective written requests for admission
- Strategize the order of individual requests to optimize the overall effectiveness of a written request for admission
- Produce a set of written requests for admission that complies with Wisconsin statutory requirements
- Summarize the process for responding to requests for admission
- Explain the paralegal's role with respect to requests for admission

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

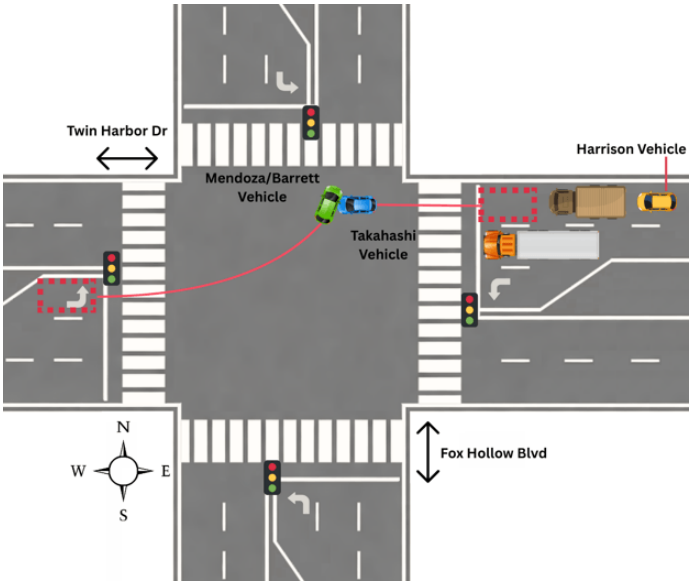

Figure 6.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

Requests for Admission (RFAs) are typically the final phase of civil discovery. Unlike other discovery tools, RFAs are not intended to uncover new information; instead, they are used to confirm the truth or authenticity of facts and documents that have already been developed through the discovery process. When carefully drafted, RFAs can be a highly effective strategic tool—streamlining the issues for trial, strengthening a party's position, and, in some cases, playing a decisive role in the outcome of the case.

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6.1: Utilizing Written Requests for Admission in a Civil Action

The purpose of Requests for Admission (RFAs) is to streamline litigation by narrowing the number and scope of disputed issues. By reducing points of contention, RFAs create a ripple effect throughout the case, minimizing the need for additional discovery, witnesses, and trial preparation. Fewer disputed issues often mean fewer witnesses, which in turn reduces litigation costs. This can result in significant savings, particularly when RFAs eliminate the need for costly expert testimony. Additionally, well-crafted RFAs can highlight and isolate key facts that might otherwise be obscured within extensive documents, deposition testimony, and electronically stored information (ESI), bringing critical evidence into sharper focus.

Requests for Admission



Figure 6.1.1: Requests for Admission. (WisTech Open, 2026. *Requests for admission*. CC BY 4.0).

Simplifying the points in controversy could also lead to an early settlement of the case. Claims and defenses that have no legal merit evaporate quickly under the scrutiny of a well-drafted RFA. RFAs are especially useful for:

- Authenticating documents or other tangible items
- Establishing the truth of straightforward or undisputed facts
- Reducing the number of facts or legal contentions that must be proven at trial
- Confirming the proper application of law to the facts
- Limiting an opposing party's ability to contradict facts or positions later in the case

Similar to interrogatories and requests for production, plaintiffs may serve RFAs simultaneously with the summons and complaint (this is extremely rare) or at any time after service has been completed. Defendants may serve RFAs on the plaintiff at any time after the summons and complaint have been filed, and on any other party after the party has been served. Wis. Stat. § 804.11(1) (2025).

Limits on Requests for Admission

Although some jurisdictions, including the Federal courts, place numerical limits on RFAs, Wisconsin does not. However, like other discovery, in Wisconsin RFAs cannot be unreasonably cumulative or duplicative, seek information obtainable from a more convenient source, or impose an undue burden or expense on the responding party in light of the needs of the case. Wisconsin courts apply proportionality principles when evaluating such objections and may issue protective orders or impose limitations as appropriate. Wis. Stat. § 804.01(2)(am) (2025). Any request must be relevant to the claims or defenses and proportional to the

needs of the case.

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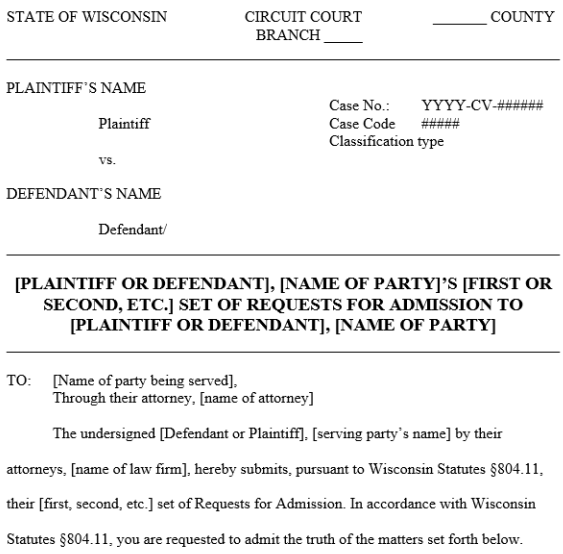
6.2: Drafting Written Requests for Admission

The ultimate objective of an RFA is to establish which facts and legal contentions are undisputed and thus limit the issues for trial. Although there is no statutorily required form for RFAs, the form and basic content are somewhat standardized in practice.

RFAs begin with the official caption used in the lawsuit. The title of the RFAs should include the name and party designation of the person requesting them, as well as the name and party designation of the person on whom they are served. The first paragraph further identifies the method of service (typically on the party's attorney) and the statute authorizing the RFAs.



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

[PLAINTIFF OR DEFENDANT], [NAME OF PARTY]'S [FIRST OR SECOND, ETC.] SET OF REQUESTS FOR ADMISSION TO [PLAINTIFF OR DEFENDANT], [NAME OF PARTY]

TO: [Name of party being served],
Through their attorney, [name of attorney]

The undersigned [Defendant or Plaintiff], [serving party's name] by their attorneys, [name of law firm], hereby submits, pursuant to Wisconsin Statutes §804.11, their [first, second, etc.] set of Requests for Admission. In accordance with Wisconsin Statutes §804.11, you are requested to admit the truth of the matters set forth below.

Figure 6.2.1: Example Caption of a set of RFAs for a Civil Action Filed in Wisconsin Court. (WisTech Open, 2026. *Summons example by Beth Pless.* CC BY 4.0).

Although not required by statute, best practice dictates the inclusion of instructions and relevant definitions.

Drafting Request for Admission Instructions

Similar to interrogatories, the purpose of the instructions section in RFAs is to inform the responding party of the statutory requirements and expectations for answering. Typical instructions borrow language from Wis. Stat. § 804.11 (2025), as well as additional requirements supported by Wisconsin law.

Example 6.2.1: Instructions for a set of RFAs

INSTRUCTIONS

1. Answer each request separately in writing, under oath, unless it is objected to, in which event the reasons for the objection must be set forth fully in lieu of the answer.
2. If you decline to admit any portion of a request, you must specifically deny the matter and/or set forth in detail the reasons why you cannot truthfully admit or deny the matter. When good faith requires that you qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.
3. If you object to any request or any portion of a request pursuant to Section 804.12(3), Wis. Stats., please set forth all the reasons why the party cannot admit or deny it.[1]

Some attorneys also like to include an instruction explicitly directing that the definitions section applies to all RFAs.

Drafting Request for Admission Definitions

Once again, careful review of the client's file – particularly the pleadings, proof chart, and case chronology – can assist in identifying words, phrases, or descriptions that are likely to recur throughout the RFAs, making them well-suited for inclusion in a centralized definitions section.

For example, in personal injury cases, defining the word "incident" to include the date, time, location, and basic mechanism of injury. Similarly, in automobile accident cases, each party's vehicle can be defined by make, model, year, and VIN. The table below contains examples of how such words might be defined.

Example 6.2.2: Automobile Accident Case Definitions

Document(s): "Document" is used in the broadest possible sense and refers to any form of communication or data storge however, produced or reproduced, regardless of whether it now exists. This definition includes, but is not limited to, advertisements, agreements, books, calculations, cancel checks, charts, computer printouts, contracts, data compilations from which information can be obtained, data sheets, data processing cards, diaries, drawings, electronically stored information, forms, graphs, handwritten notes, indexes, invoices, letters, memoranda, pamphlets, periodicals, photographs, records, reports, studies, tapes, telegrams, and working papers, as any written, printed, typed or graphic matter of any kind or nature, now in the possession, custody or control of a party to this action, or in the possession, custody or control of the present or former officers, agents, representatives, employees of a party or any and all persons acting in its or the party's behalf, including documents at any time in the possession, custody or control of such individuals or entities, or known by the responding party to exist.

Incident: The collision that occurred at the intersection of [name of street] and [name of street] between [name of driver 1] and [name of driver 2], on or about [Month, Day, Year] at approximately [time a.m./p.m.]

Plaintiff's vehicle: The motor vehicle operated by [name of plaintiff] at the time of the incident, specifically, a [year, make, model] with a VIN [vehicle identification number, if known]

Relate/Relating to: These terms are synonymous with "refer to," "summarize," "contain," "include," "mention," "explain," "discuss," "define," "describe," "point out," "comment on," "remark," and similar words and phrases.

You/Your: The defendants, their present and former members, officers, agents, employees, and all other persons acting or purporting to act on their behalf, including all present or former members, officers, agents, employees, and all other persons exercising or purporting to exercise discretion, making policy, and making decisions.

For other types of causes of action, it may be useful to define terms such as agreement, computer, or report.

By clearly defining key terms, legal practitioners can streamline RFAs while minimizing the risk of objections based on vagueness. Well-crafted definitions communicate precisely what information must be produced. By front-loading these expectations, practitioners are more likely to obtain complete and useful responses and avoid unnecessary follow-up discovery.

Drafting the Requests

Effectively drafted RFAs are clear, focused, and designed to obtain relevant evidence efficiently while complying with discovery rules. In practice, strong RFAs share several common characteristics:

- Clear and unambiguous: Use plain, straightforward, concrete language. Vague or open-ended language is avoided to reduce objections and confusion. Clear language in requests for admission is crucial to establish specific matters conclusively and to avoid evasive or technical denials.
- Limited to a single fact or legal contention: Each request should address only one material fact or one discrete element of a claim, defense, or legal contention. Avoid compound requests that require multiple admissions or denials. Any descriptive adjective or adverb should be limited to a single, objectively verifiable characteristic that is capable of being directly

observed, measured, or otherwise established through admissible evidence.

- Neutrally stated: Each request should be phrased in a factual, objective, and non-argumentative manner. Avoid editorial comments, opinions, subjective characterizations, conclusory labels, or inflammatory language. The request should seek an admission of a fact or legal contention without suggesting how the responding party should answer or implying wrongdoing.
- Self-contained: Write the request so that it is understandable on its own without requiring reference to prior requests for context. When necessary details such as dates, locations, or identities apply, state them clearly in the request or use defined terms.
- Specific as to time, place, and subject matter: Precisely identify the relevant time period, geographic location, and subject. Consider attaching as exhibits any documents that are the subject of a request.
- Easily admitted or denied: Each request should be drafted so that the responding party can readily answer with "admit," "deny," or a concise explanation of why they cannot truthfully admit or deny after a reasonable inquiry. The request should be clear, specific, and narrowly focused, avoiding unnecessary complexity, lengthy narrative responses, or requests that seek pure legal conclusions rather than the application of law to facts.
- Appropriate scope and proportionality: Seek admissions that are relevant to the claims or defenses in the case. Focus on disputed issues, elements of claims, defenses, damages, or the authenticity of documents. Do not include requests that have little value to the litigation.
- Carefully sequenced: Requests should be organized in a logical progression that builds toward the ultimate issues in dispute. Begin with foundational facts and legal contentions that are likely undisputed, proceed to narrower or lower-stakes disputed matters, and conclude with requests seeking admissions on the most significant disputed facts and applications of law to fact. This sequencing promotes clarity, encourages incremental admissions, and improves the efficiency of discovery.
- Logically organized: When possible, arrange requests by subject matter, seeking admissions related to the same or closely related subjects in sequence. Each subject area should be addressed fully before moving on to a new topic. Group related subjects together (for example, background facts, liability facts, damages, documents).

Taken together, these characteristics help ensure that Requests for Admission serve as a precise, efficient, and highly effective discovery tool. Below is an example template showing how requests might be structured.

Example 6.2.3: Requests

REQUESTS

REQUEST #1: [Admit that] [fact or contention]. [Alternatively, state the fact or contention without the preface, "Admit that"]

REQUEST #2: [Admit that] [fact or contention]. [Alternatively, state the fact or contention without the preface, "Admit that"][2]

Many litigation firms maintain sample RFAs or template forms to guide this process, and litigation form books – such as *Wisconsin Pleading and Practice* – *are* also valuable resources. Once an appropriate sample is located, the client's pleadings, proof chart, and case chronology – as well as discovery responses already received – should be consulted to properly tailor the requests to the client's case.

Requests for Admission may seek admissions regarding statements or opinions of fact, including ultimate facts; the application of law to fact; and the genuineness or authenticity of documents identified in the request. Their scope extends beyond purely evidentiary matters and includes mixed questions of law and fact, such as negligence, comparative negligence, causation, ownership, agency, and other issues central to the parties' claims and defenses. Properly used, Requests for Admission can establish foundational facts, authenticate documents, and conclusively resolve matters that might otherwise require proof at trial. In some cases, the admissions obtained may be sufficient to dispose of all or part of a case.

Because admissions are conclusively established unless withdrawn or amended, Requests for Admission are among the most effective discovery devices for narrowing contested issues and promoting efficiency in litigation. By eliminating the need to prove undisputed matters, they streamline trial preparation, conserve party and judicial resources, and may provide a basis for summary judgment or other early resolution of the case.

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1. Example Instructions for a set of RFAs for a Civil Action Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless*. CC BY 4.0).
2. Ibid.

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6.3: Responding to Written Requests for Admission

Perhaps more than any other form of written discovery, RFAs demand careful attention to response deadlines. Failure to respond within the applicable time period results in the automatic admission of the matters requested, a consequence that can significantly narrow the issues in dispute or, in some cases, effectively determine the outcome of the case. Accordingly, one of the first steps upon receiving RFAs is to immediately calendar the response deadline and establish reminder ticklers well in advance of that date. In Wisconsin, RFAs generally must be answered within 30 days after service. However, a defendant is not required to respond until 45 days after service of the summons and complaint. . Wis. Stat. §804.11(1)(b) (2025).

Although attorneys and clients understandably seek to respond in a manner that advances their claims or defenses while avoiding admissions that could weaken their litigation position, responses to RFAs are subject to important procedural and ethical constraints. An insufficient response, unsupported objection, or unjustified denial may expose a party to significant consequences. For example, when a party denies a request and the requesting party later proves the matter at trial, the court may require the denying party to pay the reasonable expenses incurred in making that proof, including attorney fees. Wis. Stat. §804.12(3) (2025). Such an award is mandatory unless one of the statutory exceptions applies.[1] Accordingly, parties responding to RFAs must balance zealous advocacy with their obligation to provide candid, accurate, and good-faith responses.

Responding to Requests for Admission (RFAs) requires a structured and collaborative process. The legal team should begin by reviewing the pleadings, discovery responses, deposition transcripts, relevant documents, and anticipated testimony from parties, witnesses, and experts. Based on this review, the attorney determines whether to respond to each request by admitting, denying, qualifying, or objecting to it.

As a practical matter, the paralegal should request an electronic copy of the RFAs from opposing counsel. Doing so eliminates unnecessary retyping and facilitates the drafting process. Unlike interrogatories, which typically require narrative responses, RFAs generally permit only four types of responses:

1. Admit
2. Deny (with or without qualifications or explanations)
3. Admit in part and deny in part
4. Explain in detail why the answering party cannot truthfully admit or deny the matter (typically an objection to the request)

Below is an example template for responses to RFAs.

STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ _____ COUNTY

PLAINTIFF'S NAME

Plaintiff

vs.

DEFENDANT'S NAME

Defendant/

Case No.: YYYY-CV-######
Case Code #####
Classification type

[PLAINTIFF OR DEFENDANT], [NAME OF PARTY] RESPONSES TO [PLAINTIFF OR DEFENDANT], [NAME OF PARTY]'S [FIRST OR SECOND, ETC.] SET OF REQUESTS FOR ADMISSION

TO: [Name of party being served],
Through their attorney, [name of attorney]

The undersigned [Defendant or Plaintiff], [responding party's name] by their attorneys, [name of law firm], hereby responds to [serving party's name]'s Request to Produce as follows:

[Full text of REQUEST #1]

RESPONSE #1: [Admit.] or [Admit (specify portion being admitted). Deny (specify part being admitted).] or [Admit/Deny (include qualification or explanation)] or [Objection (specify objectional portion and grounds for objection). Subject to this objection, and without waiving it, this request is admitted/denied.] or [After making a reasonable inquiring, the information known or readily obtainable remains insufficient to allow the undersigned to truthfully admit or deny this request.]

Figure 6.3.1: Example Instructions for a set of RFAs for a Civil Action Filed in Wisconsin Court (WisTech Open, 2026. *Summons example by Beth Pless.* CC BY 4.0).

A party may not claim lack of information or knowledge as a reason for failing to admit or deny unless the party affirmatively states

that, after making a reasonable inquiry, the information known or readily obtainable remains insufficient to enable an admission or denial. Wis. Stat. §804.11(1)(b) (2025).

Because any matter admitted is conclusively established unless the court permits withdrawal or amendment of the admission, careful analysis of each request is essential. Wis. Stat. §804.11(2) (2025). The legal team should scrutinize the precise wording of every request, paying particular attention to defined terms, dates, qualifications, and embedded assumptions. Even subtle differences in language can materially affect the scope and effect of an admission. When a request is accurate, it should be admitted. Denying an indisputable fact serves little purpose, diminishes credibility, and may expose the responding party to sanctions or cost-shifting if the matter is later proven.

Similarly, a denial should be made only when the party genuinely disputes the matter after conducting a reasonable inquiry. The objective is not to avoid admissions at all costs, but to accurately identify those matters that are truly contested. When responding with a denial, the denial must specifically address the request and fairly meet the substance of the matter for which an admission is sought. If only part of the request is disputed, the responding party should admit the portion that is true and specifically deny or qualify the remainder. Any qualification should clarify the response rather than hedge, evade, or obscure the issue. Evasive responses invite motions challenging the sufficiency of the answer and often undermine the responding party's credibility.



Figure 6.3.2: Denial. (Created on Gemini)

Objections should be asserted only when supported by a legitimate basis and should be stated with specificity. Boilerplate objections such as "vague and ambiguous" or "overly broad," standing alone, are generally disfavored. Moreover, a request is not objectionable merely because it relates to a matter that presents a genuine issue for trial. Wis. Stat. §804.11(1)(b) (2025). If only a portion of a request is objectionable, the responding party should answer the non-objectionable portion to the extent possible rather than refusing to respond entirely.

Before serving the responses, counsel should review all admissions, denials, qualifications, and objections with the client to ensure factual accuracy and avoid unintended concessions. Clients should understand that RFAs are not simply another opportunity for advocacy. Rather, they are designed to identify matters that are genuinely disputed and to eliminate the need to prove matters that are not. A useful guiding principle is this: **admit what is true, deny what is genuinely disputed, qualify what is partially true, and object only when a legitimate basis exists.** Adhering to this approach promotes credibility, minimizes unnecessary discovery disputes, and protects the client from the potentially significant consequences associated with improper responses.

Once approved, the responses and documents are served on opposing counsel. A copy is retained in the client file where it is easily accessible. The paralegal monitors for any follow-up issues, such as challenges by opposing counsel to the sufficiency of answers or propriety of objections. The process above demonstrates that, while 30 days may initially appear to be ample time, properly responding to RFAs can take a significant amount of time. Rushed, inaccurate, or incomplete responses to RFAs can seriously harm a client's case.

1. “The court shall make the order unless it finds that (a) the request was ... objectionable ...., (b) the admission sought was of no substantial importance, or (c) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or (d) there was other good reason for the failure to admit.

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6.4: The Paralegal's Role in Written Requests for Admission

The paralegal plays a significant role in the preparation, management, and strategic use of Requests for Admission (RFAs) throughout the life of a case. During the discovery-planning stage, paralegals review pleadings, documents, witness statements, and other discovery materials to help identify facts, legal contentions, and documents that may be appropriate subjects for requests for admission. Working closely with counsel, they assist in developing discovery strategies designed to narrow disputed issues and establish matters that need not be proven at trial.

Paralegals also frequently assist with drafting and organizing RFAs. This includes preparing draft requests for attorney review, ensuring that requests are clear and properly supported by the available evidence, and organizing exhibits and documents that may be referenced in the requests. After service, paralegals play an important administrative role by calculating response deadlines, maintaining litigation calendars, creating reminder systems, and monitoring compliance with applicable procedural rules.

When responding to RFAs served by an opposing party, paralegals often coordinate the information-gathering process. They may collect relevant documents, review prior discovery responses, summarize deposition testimony, and assist attorneys in evaluating whether particular requests should be admitted, denied, qualified, or objected to. In doing so, paralegals help ensure that responses are accurate, complete, and consistent with the facts and overall litigation strategy.

As the case progresses, paralegals help track admissions and maintain records of how each request was answered. Because admissions may conclusively establish facts and authenticate documents, this information can be particularly valuable in motion practice, settlement negotiations, and trial preparation. Paralegals may create admission summaries, organize supporting evidence, and assist attorneys in identifying admissions that support dispositive motions or eliminate the need for proof at trial.

Ultimately, under the attorney's supervision, the paralegal serves as both an organizational manager and a litigation support professional throughout the RFA process. By coordinating deadlines, gathering and organizing information, maintaining discovery records, and helping counsel leverage admissions effectively, the paralegal contributes significantly to efficient case management and the successful resolution of litigation.

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6.5: Key Takeaways

Utilizing Written RFAs

- Requests for Admission (RFAs) are designed to narrow and simplify the issues in dispute. Unlike interrogatories and requests for production, RFAs are not primarily intended to uncover new information. Instead, they establish undisputed facts, authenticate documents, confirm the application of law to fact, and reduce the matters that must be proven at trial.
- Well-crafted RFAs can significantly reduce litigation costs and trial preparation. By eliminating unnecessary factual disputes, RFAs may reduce the need for additional discovery, witnesses, expert testimony, and evidentiary foundation at trial.
- RFAs may address facts, the application of law to fact, and the authenticity of documents. Appropriate subjects include ultimate facts, negligence, comparative negligence, causation, ownership, agency, damages, and other issues central to the parties' claims and defenses.
- Wisconsin does not impose a numerical limit on RFAs. However, requests must remain relevant to the claims or defenses and proportional to the needs of the case. Requests that are cumulative, duplicative, or unduly burdensome may be subject to objection.

Drafting Written RFAs

- Effective RFAs share several common characteristics. They are clear, unambiguous, limited to a single fact or legal contention, neutrally worded, self-contained, specific, proportional, logically organized, and capable of being readily admitted or denied.
- Instructions and definitions improve the effectiveness of RFAs. Carefully drafted definitions clarify recurring terms, reduce ambiguity, and minimize disputes regarding the meaning and scope of requests.
- The sequence of requests matters. Effective RFAs typically begin with foundational and undisputed matters, proceed through smaller disputed issues, and conclude with requests addressing the most significant disputed facts and legal contentions.
- Admissions obtained through RFAs are powerful evidentiary tools. Unless withdrawn or amended with court approval, admissions are conclusively established for purposes of the litigation and may support summary judgment or other early resolution of the case.

Responding to Written RFAs

- Timely responses are essential. Failure to respond within the applicable deadline results in the automatic admission of the matters requested, potentially determining the outcome of the case.
- RFAs generally permit only four types of responses: admit, deny, admit in part and deny in part, or explain why the party cannot truthfully admit or deny after a reasonable inquiry.
- A responding party must conduct a reasonable inquiry before claiming insufficient knowledge. Lack of information alone is not a proper basis for failing to admit or deny a request.
- Admissions should be made whenever a request is true. Unjustified denials can reduce credibility, increase litigation expenses, and expose a party to statutory cost-shifting sanctions.
- Denials must fairly meet the substance of the request. If only part of a request is disputed, the responding party should admit the true portion and specifically deny or qualify the remainder.
- Objections must be specific and supported by a legitimate basis. Boilerplate objections are generally disfavored, and the existence of a genuine issue for trial does not, by itself, make a request objectionable.
- A useful guiding principle for responding to RFAs is to admit what is true, deny what is genuinely disputed, qualify what is partially true, and object only when a valid basis exists.

The Paralegal's Role in RFAs

- Paralegals play a vital role throughout the RFA process. Their responsibilities include assisting with drafting, organizing exhibits, monitoring deadlines, gathering information, coordinating responses, tracking admissions, and supporting motion practice and trial preparation.
- Effective management of RFAs can shape the outcome of a case. Properly drafted and strategically used requests can narrow issues, promote settlement, support dispositive motions, streamline trials, and, in some circumstances, resolve all or part of the litigation before trial.

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6.6: Summary

Requests for Admission (RFAs) are a specialized discovery device designed to identify and eliminate matters that are not genuinely in dispute. Rather than uncovering new information, RFAs seek admissions regarding facts, the application of law to fact, and the authenticity of documents. By establishing what is undisputed, RFAs narrow the issues requiring proof and allow parties to focus their efforts on the matters that truly remain contested.

When used strategically, RFAs can be among the most powerful tools in civil litigation. They can authenticate documents, establish foundational facts, reduce the need for witnesses and other evidence, support dispositive motions, and encourage settlement. In some cases, admissions obtained through RFAs may substantially weaken a party's claims or defenses or even dispose of all or part of a case before trial.

Effective RFAs are carefully drafted to maximize their usefulness while minimizing objections and ambiguity. Strong requests are clear, concise, specific, neutrally worded, and limited to a single fact or legal contention. They are also logically organized and strategically sequenced, beginning with foundational matters and progressing toward the most significant disputed issues. The inclusion of appropriate definitions and instructions further enhances clarity and promotes meaningful responses.

Because admissions are generally binding and conclusively establish the matters admitted, responding to RFAs requires careful analysis and attention to detail. Parties must conduct a reasonable inquiry before answering and must respond in good faith. Responses typically consist of admissions, denials, partial admissions and denials, or explanations of why the party cannot truthfully admit or deny the matter. Unsupported objections, evasive answers, and unjustified denials can lead to court intervention, cost-shifting sanctions, and other adverse consequences.

Timeliness is especially important when dealing with RFAs. Failure to respond within the applicable deadline may result in the automatic admission of every matter contained in the request. As a result, effective calendaring, case management, and communication among attorneys, clients, and support staff are essential throughout the process.

Paralegals play a key role in every stage of the RFA process. Working under attorney supervision, they assist with discovery planning, drafting requests, organizing supporting documents, monitoring deadlines, coordinating client communications, preparing responses, tracking admissions, and supporting motion practice and trial preparation. Through careful organization and attention to detail, paralegals help ensure that RFAs are used effectively to advance litigation objectives and promote the fair and efficient resolution of disputes

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Terms with Definitions

Admission: A response to a Request for Admission in which a party acknowledges the truth of a fact, the application of law to fact, or the authenticity of a document. Unless withdrawn or amended with court approval, an admission is conclusively established for purposes of the case.

Application of Law to Fact: A mixed question involving both factual circumstances and legal principles. Requests for Admission may seek admissions regarding how the law applies to particular facts, such as negligence, causation, agency, or ownership.

Authentication: The process of establishing that a document or item is genuine. Requests for Admission are frequently used to authenticate documents and eliminate the need for foundation testimony at trial.

Denial: A response in which the responding party disputes the truth of a requested admission. A denial must fairly meet the substance of the request.

Document Authentication Request: A Request for Admission seeking confirmation that a document is genuine and what it purports to be.

Good-Faith Response: A candid, accurate, and honest response made after reasonable inquiry and in compliance with procedural rules.

Qualified Admission: An admission that is limited or clarified because only part of the request is accurate.

Reasonable Inquiry: The investigation a party must conduct before claiming inability to admit or deny a request. A lack of information is not a sufficient response unless reasonable inquiry has been completed.

Request for Admission (RFA): A written discovery device that asks a party to admit or deny facts, the application of law to fact, or the genuineness of documents.

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6.8: References

1. Wis. Stat. § 804.01 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/01]
2. Wis. Stat. § 804.11 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/11]
3. Wis. Stat. § 804.12 (2025). [docs.legis.wisconsin.gov/statutes/statutes/804/12]

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7: EVIDENCE AND MOTION PRACTICE

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7.0: Introduction

Competency: Apply the Wisconsin Rules of Evidence to evaluate the admissibility of oral and documentary exhibits in a civil litigation case file.

Learning Objectives

- Explain concepts governing admissibility of evidence (relevance, authenticity, foundation, and hearsay)
- Determine the appropriate procedure to address evidentiary concerns
- Detect potential evidentiary challenges
- Explain the paralegal's role with respect to evidence-based motions

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigation officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

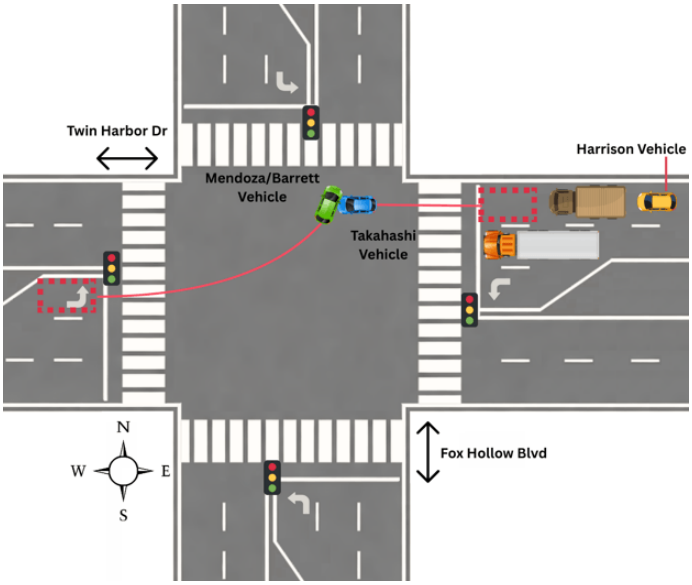

Figure 7.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

In the preceding chapters, you learned how legal practitioners use discovery tools such as interrogatories, requests for production, depositions, and requests for admission to gather information about a dispute. Through these processes, a case file accumulates witness testimony, documents, photographs, electronic communications, business records, and other materials that appear relevant to the issues in the case. However, the completion of discovery does not end the evidentiary analysis. The next step is determining which of those materials can actually be presented to the court and what must be done to ensure their admissibility.

The distinction between information obtained during discovery and admissible evidence is an important one. Discovery rules generally permit the exchange of a broad range of information that may lead to relevant evidence, while the rules of evidence are considerably more restrictive. Courts do not admit every piece of information a party wishes to present. Instead, evidence must satisfy a set of rules designed to help judges and juries make decisions based on information that is relevant, reliable, and fair. The rules of evidence seek to balance competing interests: allowing parties a meaningful opportunity to prove their claims and defenses while protecting the integrity of the fact-finding process. By excluding unreliable hearsay, requiring authentication of documents and exhibits, and limiting evidence whose unfair prejudice substantially outweighs its probative value, the rules promote accurate verdicts and public confidence in the judicial system.

For paralegals, understanding the rules of evidence is essential because evidentiary issues arise throughout litigation, from reviewing discovery responses and organizing exhibits to preparing witnesses, drafting motions, and assisting with trial preparation. Effective case preparation requires more than collecting information; it requires identifying potential objections, recognizing evidentiary weaknesses, and determining what additional steps may be necessary to support admissibility. Paralegals who understand the rules of evidence can play a significant role in helping attorneys develop litigation strategy and avoid evidentiary problems before they arise in court.

The Wisconsin Rules of Evidence provide the framework for this analysis. When reviewing materials contained in a case file, legal practitioners should ask a series of questions. Is the evidence relevant to a disputed fact? Can it be authenticated as genuine? Is there a witness or other means of establishing the necessary foundation? Does the evidence contain hearsay or raise another admissibility concern? These questions must be applied not only to evidence that supports a client's claims or defenses, but also to evidence offered by the opposing party. By analyzing both sides' evidence through the lens of the rules of evidence, attorneys and paralegals can determine whether their own evidence is likely to be admitted, identify potential weaknesses in an opponent's proof, anticipate objections, and develop strategies for supporting or challenging the admissibility of evidence before trial. Consistent application of this framework helps legal professionals evaluate whether information obtained through discovery can be transformed into admissible evidence that may be considered by the factfinder.

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7.1: The Admissibility Framework

Evidence may be classified in a variety of ways. Evidence can be direct or circumstantial, real (physical) or demonstrative, and oral or documentary. These classifications describe how evidence proves a fact and the form in which it is presented. Although no category of evidence is inherently more persuasive than another, the classification often affects how the evidence is authenticated, what foundation is required, and what objections may arise.

When reviewing evidence gathered during discovery, legal professionals should therefore identify both what type of evidence they have and whether it satisfies the requirements for admissibility. Regardless of its classification, virtually every item of evidence can be evaluated using the same four-part framework:

1. Is the evidence relevant?
2. Can the evidence be authenticated?
3. Has a proper foundation been established?
4. Is the evidence excluded by the hearsay rule or another evidentiary rule?

Together, these questions provide a practical checklist for evaluating witness testimony, documents, photographs, recordings, electronic communications, demonstrative exhibits, and physical evidence before trial.

Step 1: Relevance

The first question in the admissibility analysis is whether the evidence is relevant to an issue in dispute. Under Wisconsin law, relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Wis. Stat. § 904.01(2025). Relevant evidence is generally admissible; irrelevant evidence is not. Wis. Stat. § 904.02 (2025).

The concept of relevance contains two related components. First, the evidence must relate to a fact that is connected to an issue that matters under the substantive law governing the claim or defense. Second, the evidence must have some tendency, however slight, to make that fact more or less probable than it would be without the evidence. The Wisconsin Rules of Evidence set a relatively low threshold; evidence need not conclusively prove a fact to be relevant. Instead, it need only contribute something to the factfinder's evaluation of a disputed issue.

Determining relevance requires legal practitioners to understand the elements of the claims and defenses asserted in the case. Evidence cannot be evaluated in isolation. Its relevance depends on the purpose for which it is offered and the fact it is intended to prove. For example, in a negligence action arising out of an automobile accident, the plaintiff's medical records documenting injuries, treatment, and prognosis are relevant because they tend to establish the nature and extent of the plaintiff's damages. By contrast, those same medical records would likely have little or no relevance in a breach of warranty action involving a defective car radio because the plaintiff's physical injuries are not a fact of consequence to that claim. The significance of evidence therefore depends on the legal issues being litigated. Table 7.1.1 shows how the different types of evidence are evaluated for relevance, based on the type of evidence and how it may be used.

Table 7.1.1: Relevance and different types of evidence

Type of Evidence	Evaluation for Relevance
Direct evidence	Establish existence or non-existence of a disputed fact without requiring additional inferences, such as eyewitness testimony or a video recording of an event.
Circumstantial evidence	Support an inference from other facts that is logically connected to a material issue in the case, such as an injury, disability, or property damage that did not exist prior to the collision.

Type of Evidence	Evaluation for Relevance
Real/physical evidence	Help prove or disprove a disputed fact by showing the existence or condition of the physical object, such as an empty whiskey bottle found in the backseat of the defendant's vehicle.
Demonstrative evidence	Assist the factfinder in understanding other evidence or testimony, such as a diagram of the accident scene.
Oral evidence or Documentary evidence	Help prove or disprove a fact necessary to the claim, defense, or other issue, such as witness statements, medical records, or photographs of a damaged vehicle.

When evaluating relevance, paralegals should develop the habit of asking a simple question: **"What fact does this evidence tend to prove or disprove?"** If a clear answer cannot be identified, the evidence may be vulnerable to a relevance objection. This question is particularly useful when reviewing extensive discovery materials, where parties often obtain information that is interesting or potentially useful but only marginally connected to the disputed issues. Effective evidentiary analysis requires distinguishing between information that is merely related to the parties and information that actually helps establish a fact that matters to the outcome of the case.

Relevance is the threshold requirement for admissibility. If evidence does not assist the factfinder in resolving a material issue in the case, there is little reason to devote additional time to questions of authentication, foundation, or hearsay. Nevertheless, even relevant evidence may be excluded if its probative value is substantially outweighed by dangers such as unfair prejudice, confusion, misleading the jury, undue delay, or needless cumulative proof.

Step 2: Authentication

Once relevance has been established, the next question is whether the evidence can be authenticated. Authentication is the process of proving that an item of evidence is what the party offering it claims it to be. Under Wisconsin law, "[t]he requirements of authentication or identification as a condition precedent to admissibility are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Wis. Stat. § 909.01 (2025). Authentication serves an important gatekeeping function because evidence has little value if there is no reliable basis for concluding that it is genuine. Before a document, photograph, email, text message, social media post, audio recording, video recording, or physical object may be admitted, the proponent must establish its identity and authenticity.

Authentication does not require the offering party to prove beyond all doubt that an item is genuine. Rather, the proponent must introduce sufficient evidence from which a reasonable factfinder could conclude that the item is what it is claimed to be. Once that preliminary showing has been made, questions about the weight or credibility of the evidence are generally left for the factfinder to decide. Thus, authentication concerns admissibility, while credibility concerns the persuasiveness of the evidence after it has been admitted.

Authentication can be accomplished in many different ways depending on the nature of the evidence. Table 7.1.2 shows how the different types of evidence are authenticated.

Table 7.1.2: Authentication process for different types of evidence

Type of Evidence	Authentication
Direct evidence or Circumstantial evidence	The distinction between direct and circumstantial evidence generally has little effect on how the evidence is authenticated.

Type of Evidence	Authentication
Real/physical evidence	Proof, typically through witness testimony, that the item offered at trial is the actual object involved in the events at issue. For physical evidence that may be susceptible to alteration, a chain of custody may be necessary.
Demonstrative evidence	Proof through testimony establishing that it fairly and accurately depicts what it purports to represent.
Oral evidence	Identification of the witness and proof that the witness has personal knowledge of the matters about which they will testify.
Documentary evidence	Documents, photographs, emails, text messages, social media posts, recordings, and electronically stored information must be connected to their purported source through testimony or another recognized method of authentication.

The Wisconsin Rules of Evidence identify numerous methods by which evidence may be authenticated. Wis. Stat. § 909.015 (2025). One of the most common methods is testimony from a witness with personal knowledge. For example, a witness may testify that a photograph fairly and accurately depicts the scene as it appeared on a particular date. Similarly, a witness who received an email may identify the email and explain how they recognize it as a communication sent by a particular person. Other methods include comparison by the trier of fact or an expert witness, distinctive characteristics and circumstances, voice identification, evidence describing a process or system, and proof that a document was recorded or filed in a public office.

Authentication issues also arise with physical evidence. Suppose a plaintiff in a products liability case seeks to introduce the allegedly defective product that caused an injury. The plaintiff must be able to show that the item offered at trial is the same product involved in the incident. In some circumstances, this may require evidence establishing a chain of custody, which documents who possessed the item from the time it was collected until it was presented in court. Chain-of-custody evidence helps demonstrate that the item has not been substituted, tampered with, or materially altered.

The authentication requirement is particularly important in an era of electronic evidence. Emails, text messages, social media posts, digital photographs, and electronic records are routinely exchanged during discovery and offered at trial. However, the fact that a party produced a document during discovery does not necessarily establish that the document is authentic. A social media post may have been created by someone else using another person's account. A photograph may have been altered. An email may have been forwarded, edited, or sent from a compromised account. As a result, legal practitioners must be prepared to establish a reliable connection between the evidence and its purported source.

For paralegals, authentication should be considered long before trial. During discovery and case preparation, legal practitioners should identify how each important exhibit will be authenticated and what witness or evidence will be needed to accomplish that task. When reviewing an opposing party's exhibits, they should also look for weaknesses in the authentication process that may support an objection. A document, recording, or electronic communication may appear highly persuasive, but if the proponent cannot establish that it is genuine, the evidence may never reach the factfinder. Authentication therefore represents a critical step in converting information gathered through discovery into admissible evidence.

Step 3: Foundation

Even when evidence is relevant and authenticated, additional foundational requirements may need to be satisfied before the evidence can be admitted. Foundation consists of the preliminary facts that establish the reliability and admissibility of evidence. Authentication establishes identity; foundation establishes that the evidence satisfies the preliminary facts necessary for admission.

The foundation required for admission varies depending on the nature of the evidence being offered. Generally, the proponent must present evidence establishing the underlying facts necessary to support admissibility. For example, a witness may testify only about matters within the witness's personal knowledge. Wis. Stat. § 906.02 (2025). Thus, a witness who observed a motor vehicle collision may describe what they saw and heard, but ordinarily may not testify about information learned from others. Similarly, photographs, business records, electronic communications, and expert opinions each require their own foundational showing before they may be admitted into evidence. Establishing the proper foundation helps ensure that the evidence presented to the factfinder is sufficiently reliable and trustworthy to be considered in resolving the disputed issues in the case.

Foundation is also closely related to witness competency. In Wisconsin, every person is generally competent to be a witness unless otherwise provided by statute. Wis. Stat. § 906.01 (2025). However, competency alone does not establish foundation. The proponent must still show that the witness possesses sufficient personal knowledge, experience, training, or expertise to testify about the subject matter at issue. For example, a treating physician may be qualified to testify regarding diagnosis and treatment because of the physician's personal involvement and professional expertise, while a lay witness generally would not have the necessary foundation to offer medical opinions.

Photographs, videos, diagrams, and other visual exhibits also require foundation before admission. Although a photograph may be authenticated by a witness who recognizes it, the offering party typically must go further and establish that the photograph fairly and accurately depicts the scene, object, or condition as it existed at the relevant time. Similarly, a video recording typically requires testimony explaining when and how the recording was made and that it accurately represents the events portrayed. The purpose of this foundational testimony is to provide the factfinder with confidence that the exhibit will assist rather than mislead.

Documents frequently require their own foundational showing. A contract offered into evidence may require testimony identifying the document, explaining its purpose, and establishing its connection to the parties. Business records frequently require foundation demonstrating that the records were created and maintained in the ordinary course of business. Wis. Stat. § 909.02(12) (2025). The proponent must typically show that the record was made at or near the time of the event by a person with knowledge and that maintaining such records was a regular practice of the business. Without this foundational showing, the document may be excluded even if it appears relevant and authentic.

Foundation issues often arise with electronic evidence as well. Emails, text messages, social media posts, metadata, and electronically stored information may require testimony explaining how the information was created, maintained, or retrieved. For example, a party seeking to introduce text messages may need testimony identifying the participants in the conversation, explaining how the messages were preserved, and establishing that the messages have not been altered. As technology becomes increasingly important in litigation, foundational challenges relating to electronic evidence have become more common.

Table 7.1.3 shows the required foundation for the different types of evidence.

Table 7.1.3: Foundation requirements for different types of evidence

Type of Evidence	Required Foundation
Direct evidence	Requires relatively little additional foundation once the witness establishes personal knowledge.
Circumstantial evidence	Requires additional contextual facts so the factfinder can evaluate the reasonableness of the inference the evidence is intended to support.
Real/physical evidence	Requires testimony connecting the object to the events in dispute and explaining its condition and handling.
Demonstrative evidence	Requires proof that the exhibit accurately reflects the facts, scene, process, or data it is intended to illustrate.

Type of Evidence	Required Foundation
Oral evidence	Requires proof that the witness has personal knowledge of the matter and is competent to testify.
Documentary evidence	Requires testimony explaining the nature, creation, maintenance, or retrieval of the document. Certain records, such as business records, may require testimony from a custodian or other qualified witness.

Paralegals should think of foundation as answering the question: **"What preliminary facts must be established before this evidence can be used?"** When reviewing a case file, it is not enough to determine that an exhibit is relevant and authentic. Legal practitioners must also identify the witness, record custodian, expert, or other source needed to provide the foundational testimony required for admission. Likewise, when reviewing an opponent's evidence, paralegals should look for gaps in the foundational chain that may support an objection. An otherwise persuasive exhibit may be excluded if the proponent cannot establish the necessary foundation. For this reason, foundation is often one of the most important and frequently litigated components of the admissibility analysis.

Step 4: Hearsay and Other Exclusionary Rules

The final step in the admissibility analysis is determining whether otherwise admissible evidence is excluded by the hearsay rule or another evidentiary rule. Even evidence that is relevant, authenticated, and supported by a proper foundation may still be inadmissible if it falls within a rule that limits or prohibits its use.

Hearsay

Hearsay is one of the most frequently litigated evidentiary issues because many forms of evidence consist of statements made outside the courtroom. Wisconsin law defines hearsay as a statement, other than one made by a declarant while testifying at the current trial or hearing, that is offered into evidence to prove the truth of the matter asserted. Wis. Stat. § 908.01(3) (2025). “Statements” can be oral or written, and hearsay concerns can arise with nearly every type of evidence. Table 7.1.4 shows how hearsay concerns can arise.

Table 7.1.4: Hearsay concerns for different types of evidence

Type of Evidence	Hearsay Concerns
Direct evidence or Circumstantial evidence	The distinction between direct and circumstantial evidence generally has little effect on hearsay analysis. Both forms of evidence may be admitted or excluded depending on whether they contain or rely upon inadmissible out-of-court statements.
Real/physical evidence	Usually does not create hearsay issues because physical objects are ordinarily not statements. However, words, symbols, labels, or inscriptions appearing on an object may create hearsay concerns depending on the purpose for which they are offered.

Type of Evidence	Hearsay Concerns
Demonstrative evidence	Rarely raises hearsay concerns directly because it is generally created for litigation rather than being an out-of-court statement. Challenges instead often focus on accuracy, fairness, or the potential to mislead the factfinder.
Oral evidence	A witness attempts to testify about statements made by another person outside the courtroom, for the purpose of proving those statements are true.
Documentary evidence	Hearsay concerns arise most frequently with documentary evidence, including emails, text messages, business records, medical records, social media posts, police reports, and recorded statements, because such materials often contain out-of-court assertions offered for their truth. Documentary evidence may also contain multiple layers of hearsay, each of which must independently satisfy an exemption or exception.

Not every out-of-court statement constitutes hearsay. The hearsay rule applies only when the statement is offered to prove the truth of what the statement asserts. If the statement is offered for another purpose, such as showing that notice was given, explaining a person's subsequent actions, establishing the effect of the statement on the listener, or proving that the statement was made regardless of whether it was true, the statement may not be hearsay at all. As a result, determining whether evidence is hearsay requires legal practitioners to carefully identify the purpose for which the statement is being offered.

Example 7.1.1: Hearsay

Witness testifies, "The store manager told me the spill had been on the floor for an hour."

Table 7.1.5: Example use of statement and hearsay determination

How Statement is Used	Hearsay Determination
Statement is used to prove that the spill actually remained on the floor for an hour	Prohibited hearsay (offered to show the truth of the statement itself)
Statement is used to prove the store manager was aware of the spill, regardless of how long it was actually on the floor.	Not hearsay (offered to show notice)
Statement is used to explain why an employee was sent to inspect or clean the area	Not hearsay (offered to explain the statement's effect on the witness employee)
Statement is used to explain why the manager closed the aisle or completed an incident report.	Not hearsay (offered to explain the manager's subsequent conduct by the manager)

The key inquiry is the purpose for which the statement is offered. If it is offered to prove that the spill actually remained on the floor for an hour, the testimony is hearsay because it depends on the truth of the store manager's out-of-court statement.

However, if the statement is offered to show notice, explain subsequent conduct, or establish its effect on the listener, it is not hearsay. In that circumstance, the statement's relevance lies in the fact that it was made, not in the truth of what it asserted.

As a general rule, hearsay is not admissible unless it falls within an exemption or exception recognized by law. Wis. Stat. § 908.02 (2025). The hearsay rule is based on concerns about reliability. When a witness testifies in court, the factfinder has an opportunity to observe the witness's demeanor, assess credibility, and hear the witness respond to cross-examination. An out-of-court statement typically lacks these safeguards. Consequently, the rules of evidence generally require parties to present testimony directly from the person who made the statement whenever the statement is being offered to prove its truth.

Many materials routinely collected during discovery raise hearsay concerns. Witness statements, deposition testimony, letters, emails, text messages, social media posts, medical records, business records, police reports, and other documents frequently contain out-of-court statements. As a result, the hearsay analysis often becomes one of the most important aspects of evaluating documentary evidence. In some instances, multiple levels of hearsay may exist within a single document. For example, a medical record may contain statements made by the patient, observations recorded by medical personnel, and information supplied by third parties. Each layer of hearsay must independently satisfy an exemption or exception before the evidence can be admitted. Wis. Stat. § 908.05 (2025).

Hearsay Exceptions

Although hearsay is generally inadmissible, Wisconsin law recognizes numerous exemptions and exceptions based on circumstances that provide sufficient guarantees of reliability. Of the 23 exceptions listed in Wis. Stat. § 908.03 (2025), the exceptions listed in Table 7.1.6 below are most commonly encountered in civil litigation:

Table 7.1.6: Hearsay exceptions that apply regardless of whether the original declarant is available

Hearsay Exception	Definition	Example
Present Sense Impression	A statement describing or explaining an event made while the declarant is observing it or immediately afterward.	"The cashier is mopping the floor right now."
Excited Utterance	A statement made while under the stress of a startling event.	Immediately after a collision, a witness exclaims, "That car ran the red light!"
Statements for Medical Diagnosis or Treatment	Statements made to obtain medical diagnosis or treatment concerning symptoms, pain, medical history, or the cause of an injury.	A patient tells an emergency room physician, "I slipped on a wet floor and injured my shoulder."
Records of Regularly Conducted Activity (Business Records)	Records routinely created and maintained in the ordinary course of business.	Payroll records, inventory logs, billing statements, maintenance records, or bank records.
Patient Health Care Records	Medical records that may be admitted through statutory procedures without requiring live testimony from the records custodian.	Hospital records documenting diagnosis and treatment following an accident.

Hearsay Exception	Definition	Example
Public Records and Reports	Records or reports generated by public agencies in the performance of official duties.	Property tax records, permit records, or government inspection reports.
Learned Treatises	Authoritative publications recognized as reliable in a field of expertise.	Medical journals or engineering textbooks relied upon by expert witnesses.

Hearsay Exceptions Available Only When Declarant is Unavailable

Unlike the hearsay exceptions discussed in the preceding table, the exceptions contained in Wis. Stat. § 908.045 (2025) generally apply only when the declarant is unavailable to testify. Consequently, the proponent must establish both the declarant's unavailability and the requirements of the applicable exception before the statement may be admitted. Though this statute lists six such exceptions, the three most common are listed in Table 7.1.7 below.

Table 7.1.7: Hearsay exceptions that apply only if the original declarant is available

Hearsay Exception	Definition	Example
Former Testimony	Prior testimony given under oath where the opposing party had an opportunity and similar motive to examine the witness	Deposition testimony of a witness who dies before trial
Statement of Recent Perception	Good-faith statement describing a recently perceived event while memory was fresh	Witness describes accident to a friend shortly after it occurred
Statement Against Interest	Statement that would not reasonably have been made unless true because it was contrary to the declarant's interests	"I knew the step was broken but never fixed it."

For paralegals, hearsay analysis involves more than identifying potential objections. It also requires determining whether a hearsay problem can be resolved through an applicable exception, alternative evidence, or additional witness testimony. When reviewing a case file, paralegals should develop the habit of asking three questions: **What statement is being offered? For what purpose is it being offered? Is the original declarant available to testify as a witness?** The answers to these questions often determine whether the evidence is hearsay and, if so, whether it may nevertheless be admitted under one of Wisconsin's many statutory exemptions or exceptions. Understanding hearsay and its exceptions is therefore essential to evaluating whether information gathered during discovery can ultimately be presented to the factfinder.

Other Exclusionary Rules

Hearsay is only one basis for exclusion of otherwise relevant evidence. The Wisconsin Rules of Evidence also restrict the use of evidence when concerns about reliability, fairness, prejudice, or public policy outweigh the benefits of admitting the evidence.

Thus, evidence may be excluded if it is likely to result in jury decisions based on emotion, mislead or confuse the jury, or needlessly consume time by presenting repetitive evidence that adds little to the resolution of the disputed issues.

In these situations, the judge must balance the usefulness of the evidence in proving or disproving an important fact against the potential harm of these negative effects on the fairness or integrity of the trial. Wisconsin courts may exclude relevant evidence if its probative value (usefulness in proving a material fact) is substantially outweighed by dangers such as unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. Wis. Stat. § 904.03 (2025).

Although the classification of the evidence itself does not determine admissibility, it helps predict which admissibility issues are most likely to arise. Table 7.1.8 shows how the classification of evidence can also help legal professionals anticipate application of these exclusionary rules.

Table 7.1.8: Potential application of other exclusionary rules for different types of evidence

Type of Evidence	Classification
Direct evidence or Circumstantial evidence	Direct and circumstantial evidence are generally subject to the same exclusionary rules. However, challenges to circumstantial evidence often focus on whether the proposed inference is too speculative, weakly supported, or likely to confuse the issues. Direct evidence more frequently raises credibility concerns, although credibility ordinarily affects the weight of the evidence rather than its admissibility.
Real/physical evidence	Commonly challenged on grounds of unfair prejudice, condition, or chain-of-custody concerns. For example, graphic photographs, damaged property, or physical objects associated with an injury may be excluded if their probative value is substantially outweighed by the danger of unfair prejudice, confusion, or needless presentation of cumulative evidence.
Demonstrative evidence	May mislead the factfinder or create an inaccurate impression of the underlying facts. Diagrams, animations, reconstructions, and computer-generated exhibits must fairly and accurately depict the evidence they are intended to illustrate. Courts are particularly attentive to whether demonstrative exhibits exaggerate, distort, or overstate the evidence they represent.
Oral evidence	Frequently raises objections relating to witness competency, personal knowledge, opinion testimony, speculation, or privilege. A witness generally may testify only about matters within the witness's personal knowledge and may not speculate about facts they did not observe.

Type of Evidence	Classification
Documentary evidence	Often presents a broader range of exclusionary issues. In addition to hearsay concerns, documents may be challenged because they are incomplete, misleading, privileged, lack reliability, violate the best-evidence rule, or contain inadmissible character or opinion evidence. Electronic communications and social media evidence may also raise concerns regarding alteration, context, or unfair prejudice.

Recognizing these tendencies allows legal professionals to identify potential objections early in the litigation process. Although the same rules of evidence apply regardless of the evidence's classification, different types of evidence often present recurring admissibility concerns. By identifying whether evidence is direct or circumstantial, real or demonstrative, and oral or documentary, attorneys and paralegals can more effectively anticipate objections and determine what additional proof may be required to secure admission. In practice, legal professionals should ask: **How important is this evidence to proving a disputed fact, and does that importance outweigh any risk that the evidence will improperly influence, confuse, or distract the factfinder?** The stronger the connection between the evidence and a material issue, the more likely it is to survive the balancing test.

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7.2: Evidentiary Challenges

Applying the admissibility framework often reveals that evidence may be vulnerable to exclusion. Identifying those weaknesses, however, is only part of the analysis. Legal professionals must also recognize the specific evidentiary objections that may be raised and understand the procedures used to challenge inadmissible evidence. In practice, evidentiary disputes frequently arise when a party attempts to offer testimony, documents, photographs, electronic communications, demonstrative exhibits, or physical evidence that allegedly fails to satisfy one or more admissibility requirements. Thus, it is important to be familiar with the most frequently encountered evidentiary objections, the recurring issues associated with different forms of evidence, and the procedural mechanisms used to resolve evidentiary disputes before and during trial.

Common Evidentiary Objections

Although the rules of evidence contain numerous specialized objections, a relatively small number of recurring issues account for many evidentiary disputes encountered in litigation. Most evidentiary objections are rooted in the same admissibility principles discussed in the previous section. Essentially, objections are the practical enforcement mechanism for the admissibility rules. Table 7.2.1 shows how the admissibility problems previously discussed are related to the objections.

Table 7.2.1: Relationship between Admissibility rules and objections

Admissibility Problem	Corresponding Objection
Evidence has no meaningful connection to a disputed material issue	Relevance
Document cannot be shown to be genuine	Lack of authentication
Witness lacks firsthand personal knowledge	Lack of foundation
Witness testifies beyond what the witness actually knows (guessing), observed, or perceived through their own senses	Speculation
Witness offers conclusions or opinions that require knowledge, training, or expertise beyond the witness's qualifications.	Lack of competence
Out-of-court statement offered to prove that the statement is true	Hearsay
Evidence likely to inflame jury, provoke an emotional response, confuse the issues, mislead the jury, or consume an excessive amount of time relative to its value	Unfair prejudice Asked and answered (repeating questions to which the witness has already responded)

Some objections are directed at the form of evidence itself. The best evidence rule generally requires a party seeking to prove the

contents of a writing, recording, or photograph to produce the original or an acceptable duplicate unless an exception applies. For example, if the contents of a contract are at issue, opposing counsel may object if a witness attempts to testify about the contract's terms without producing the document itself. As you learned previously, a privilege objection is raised to protect confidential communications that the law recognizes as privileged, such as attorney-client communications, certain medical communications, and other protected relationships. Unlike many evidentiary objections, privilege is designed to safeguard important legal and public policy interests rather than simply ensure reliability.

Most objections ultimately reflect one of a few recurring questions: Is the evidence relevant? Is it reliable? Does the witness have an adequate basis for testifying? Has the proper procedure been followed? By becoming familiar with these common objections, paralegals can more easily identify potential problems when reviewing witness testimony, documents, exhibits, and other evidence.

Spotting Evidentiary Objections by Evidence Type

Certain evidentiary objections arise more frequently with particular forms of evidence. Although any item of evidence may present multiple admissibility issues, recognizing the type of evidence involved can help legal professionals quickly identify potential objections and determine what additional proof may be needed for admission. Table 7.2.2 summarizes the evidentiary issues most frequently associated with various types of evidence.

Table 7.2.2: Evidentiary concerns commonly associated with different types of evidence.

Evidence Type	Common Evidentiary Concerns
Oral Evidence	Personal knowledge, hearsay, speculation, improper opinion testimony, witness competency
Documentary Evidence	Authentication, hearsay, best evidence rule, privilege, completeness
Electronic Evidence	Authentication, identity of sender, alteration concerns, metadata issues, hearsay
Real (Physical) Evidence	Authentication, chain of custody, relevance, unfair prejudice
Demonstrative Evidence	Accuracy, foundation, misleading the jury, unfair prejudice

Although any item of evidence may raise multiple admissibility issues, legal practitioners can often identify potential objections more efficiently by first determining the type of evidence involved. For example, a text message should immediately prompt questions about authentication and hearsay, while a physical object may raise concerns regarding chain of custody. Developing this habit of pattern recognition helps attorneys and paralegals evaluate evidence more efficiently and anticipate objections before trial.

Pretrial Motions Addressing Evidentiary Issues

Identifying a potential evidentiary objection is only the first step. Before trial, attorneys often use a variety of motions to resolve evidentiary disputes, narrow contested issues, and obtain advance rulings from the court. These motions allow the parties to address admissibility concerns before evidence is presented to the factfinder, reducing the likelihood of interruptions during trial and helping counsel develop a more effective trial strategy.[1]

Motions for Protective Orders

Although protective orders arise during discovery rather than immediately before trial, they can significantly affect the evidence ultimately available for use in litigation. A party may seek a protective order to limit, condition, or prohibit certain discovery requests. Protective orders are commonly used when discovery seeks privileged information, confidential materials, trade secrets, or information that would impose an undue burden or expense. They may also be used to prevent discovery that is irrelevant or disproportionate to the needs of the case.

The moving party must prepare a motion providing proper notice that clearly identifies the legal authority for the motion, the essential facts supporting it, and the date, time, and location of the hearing at which the motion will be addressed. Wis. Stat. § 802.01(2) (2025). As with pleadings and discovery, written motions must be properly served on all parties. Allowable methods of service for motions are the same as those for discovery, and a motion is considered served when it is delivered using an approved method**.** Wis. Stat. § 801.14(1) (2025).

Supporting documentation may include the disputed discovery requests, responses, correspondence showing efforts to resolve the dispute, privilege logs, affidavits, and documents demonstrating confidentiality, burden, or potential harm. The documents are frequently attached as exhibits to an affidavit signed by the moving party, the moving party's attorney, or the appropriate records custodian. If requested by the court, legal arguments supporting the motion may be submitted in a memorandum of law or during a hearing on the motion.

The primary advantage of a protective order is that it prevents unnecessary disclosure of sensitive information and narrows disputes before evidence is gathered. The disadvantage is that limiting discovery may reduce access to potentially useful information and can lead to additional litigation over the scope of discovery.

Motions Regarding Expert Testimony

Expert testimony frequently presents unique evidentiary issues because it involves specialized knowledge beyond the understanding of an ordinary witness. If scientific, technical, or other specialized knowledge is needed to assist the factfinder in understanding the evidence or determining a disputed fact, the parties may present testimony from a qualified expert witness. Wisconsin statutes require the party to demonstrate that the witness is qualified as an expert in the specific topic based on the witness's knowledge, skill, experience, training, or education. Additionally, the testimony must be based upon sufficient facts or data and the product of principles and methods generally recognized in the field of expertise. Wis. Stat. § 907.02(1) (2025).

Challenges to the admissibility of proposed expert testimony are usually filed after expert disclosures have been exchanged, or the expert's deposition has been taken. These motions typically address whether the expert is properly qualified, whether the opinions are based on sufficient facts or data, whether reliable methods were used, and whether the testimony will assist the factfinder. In essence, such motions challenge the foundation and reliability of the expert's opinions.

Supporting documentation commonly includes expert reports, curricula vitae, deposition transcripts, scholarly materials relied upon by the expert, exhibits reviewed by the expert, and affidavits or declarations supporting or opposing the motion. Typically, these documents are attached to an affidavit signed by the expert whose opinion is being challenged. Of course, parties may preempt such motions by including this information and obtaining testimony about it during the expert's deposition.

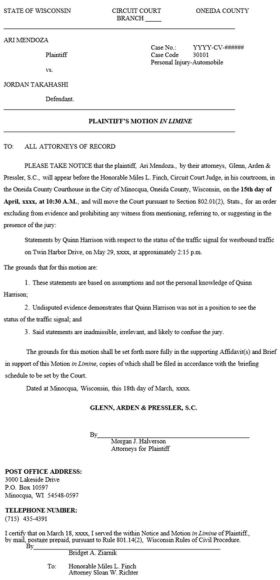
The principal advantage of resolving expert disputes before trial is that it prevents the parties from investing substantial time and expense presenting expert testimony that may later be

Motions *in Limine*

A motion *in limine* is a pretrial motion requesting that the court admit, exclude, or limit specific evidence before trial begins. They are typically filed after discovery has been completed and the parties have identified the evidence they expect to offer at trial. These motions are commonly used when the admissibility of evidence is disputed or when there is concern that the jury may be exposed to highly prejudicial information before the court can rule on an objection. For example, a party may seek to exclude prior misconduct evidence, graphic photographs, questionable social media posts, or hearsay statements before trial.

Parties may also file pretrial motions seeking to exclude evidence that was obtained improperly, or that cannot satisfy admissibility requirements. Such motions are commonly directed at documents, electronic records, recordings, or physical evidence produced during discovery and focus on authentication defects, hearsay problems, lack of foundation, privilege

issues, or alleged discovery misconduct. For example, a party may seek exclusion of documents whose authenticity cannot be established, records containing inadmissible hearsay, or evidence obtained in violation of a discovery order.



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ ONEIDA COUNTY

ARI MENDOZA
Plaintiff
vs.
JORDAN TAKAHASHI
Defendant.

Case No.: YYYY-CV-######
Case Code: 30101
Personal Injury-Automobile

PLAINTIFF'S MOTION *IN LIMINE*

TO: ALL ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that the plaintiff, Ari Mendoza, by their attorneys, Glenn, Arden & Pressler, S.C., will appear before the Honorable Miles L. Finch, Circuit Court Judge, in his courtroom, in the Oneida County Courthouse in the City of Minocqua, Oneida County, Wisconsin, on the **15th day of April, xxxx, at 10:30 A.M.**, and will move the Court pursuant to Section 802.01(2), Stats., for an order excluding from evidence and prohibiting any witness from mentioning, referring to, or suggesting in the presence of the jury:

Statements by Quinn Harrison with respect to the status of the traffic signal for westbound traffic on Twin Harbor Drive, on May 29, xxxx, at approximately 2:15 p.m.

The grounds that for this motion are:

1. These statements are based on assumptions and not the personal knowledge of Quinn Harrison;
2. Undisputed evidence demonstrates that Quinn Harrison was not in a position to see the status of the traffic signal; and
3. Said statements are inadmissible, irrelevant, and likely to confuse the jury.

The grounds for this motion shall be set forth more fully in the supporting Affidavit(s) and Brief in support of this Motion *in Limine*, copies of which shall be filed in accordance with the briefing schedule to be set by the Court.

Dated at Minocqua, Wisconsin, this 18th day of March, xxxx.

GLENN, ARDEN & PRESSLER, S.C.

By_____
Morgan J. Halverson
Attorneys for Plaintiff

POST OFFICE ADDRESS:
3000 Lakeside Drive
P.O. Box 10597
Minocqua, WI 54548-0597

TELEPHONE NUMBER:
(715) 435-4391

I certify that on March 18, xxxx, I served the within Notice and Motion *in Limine* of Plaintiff, by mail, postage prepaid, pursuant to Rule 801.14(2), Wisconsin Rules of Civil Procedure.
By_____
Bridget A. Ziarnik

To: Honorable Miles L. Finch
Attorney Sloan W. Richter

Figure 7.2.1: Motion *in Limine* Filed in Wisconsin Court

Similar to motions for protective orders, supporting documentation may include the disputed exhibit itself, deposition excerpts, affidavits, discovery responses, photographs, recordings, expert reports, or other materials necessary to explain the evidentiary issue. The documents are attached to affidavits signed by the moving party's attorney for purposes of authentication. A memorandum of law or brief identifying the applicable evidentiary rules and explaining why the evidence should be admitted or excluded frequently accompanies the motion. The court may also hold a hearing on the motion to allow oral arguments by the attorneys.

The advantage of these motions is that they allow the court to resolve significant evidentiary disputes before trial, thereby reducing uncertainty and limiting the scope of contested evidence. The disadvantage is that courts may be reluctant to exclude evidence in advance if admissibility depends on foundational testimony that could be supplied at trial.

The Paralegal's Role in Pretrial Evidentiary Motions

Paralegals play a central role in these motions because they are often most familiar with the discovery record. They frequently assist by

- Identifying privileged or confidential materials sought in discovery requests
- Preparing privilege logs
- Maintaining confidentiality designations
- Organizing expert files
- Assembling exhibits cited by the expert
- Reviewing produced documents and identifying potentially objectionable evidence
- Drafting the motion
- Compiling supporting exhibits referenced in the motion
- Organizing electronic files
- Checking citations
- Ensuring that all supporting documents are properly filed and served.

Understanding these pretrial procedures allows legal professionals to identify not only potential evidentiary problems but also the appropriate mechanism for addressing them. Effective evidentiary practice requires both substantive knowledge of admissibility rules and strategic use of the motions available to enforce those rules before trial begins.

---

1. Not all evidentiary issues can be resolved before trial. Some objections depend on the specific testimony, questions, or

foundation presented in the courtroom and therefore must be raised when the evidence is offered. Common examples include objections based on leading questions, speculation, lack of personal knowledge, improper opinion testimony, and asked-and-answered questioning. Because these issues often cannot be evaluated until the evidence is actually presented, they are typically addressed through contemporaneous trial objections rather than through pretrial motions. The disadvantage is that expert-admissibility litigation can be time-consuming and costly, particularly when extensive reports, depositions, and briefing are required.

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7.3: Reviewing a Litigation File for Evidentiary Problems

By the conclusion of discovery, a litigation file may contain hundreds or even thousands of pages of documents, witness statements, records, electronic communications, photographs, and other potential evidence. One of the paralegal's most important responsibilities is identifying evidentiary issues before trial so that attorneys can address potential objections, obtain necessary foundation testimony, and prepare appropriate motions.

Effective evidentiary review requires more than simply collecting documents. Paralegals must evaluate whether each item can ultimately be admitted into evidence. In practice, this involves applying the admissibility framework discussed throughout this chapter and anticipating the objections opposing counsel may raise. Certain evidentiary concerns appear repeatedly in particular categories of evidence, making it possible to spot potential problems quickly during file review.

Witness Statements, Testimony, and Expert Reports

When reviewing witness statements, deposition transcripts, and anticipated trial testimony, paralegals should focus on whether the witness has personal knowledge of the matters described. Statements based on assumptions, rumors, or information provided by others may be vulnerable to objections based on lack of personal knowledge, hearsay, or speculation. Particular attention should be paid to statements containing phrases such as "someone told me," "I assume," or "I believe," as these may indicate the witness is describing information outside the scope of firsthand observation. Paralegals should also compare witness statements with other evidence in the file because inconsistencies may affect credibility and expose weaknesses in the anticipated testimony. In addition, witness competency issues and references to inadmissible information may require further investigation before trial.

Expert reports often play a central role in litigation because they provide opinions on technical or specialized matters. Paralegals should review expert materials carefully to determine whether the expert's conclusions are supported by sufficient facts, data, and reliable methods. Warning signs include opinions that extend beyond the expert's field of expertise, unexplained methodologies, unsupported conclusions, reliance on incomplete records, or inconsistencies between the report and deposition testimony. Reviewing an expert's qualifications, supporting materials, and disclosures early in the case can help identify challenges that may affect the admissibility of the expert's testimony.

Paralegals should also closely examine opinion testimony. A lay witness may generally testify about observations but may not offer specialized conclusions requiring expert knowledge. Paralegals should also remember that an expert's qualifications are generally limited to the expert's particular area of knowledge, training, education, or experience. An expert may not offer opinions outside the scope of that expertise merely because they have been qualified as an expert in another field. For example, an orthopedic surgeon may be qualified to testify regarding the nature and cause of a plaintiff's physical injuries but ordinarily would not be qualified to offer opinions about the plaintiff's future earning capacity, which may require expertise in vocational rehabilitation or economics. Similarly, a forensic accountant may be qualified to calculate economic damages but not to provide medical opinions regarding the plaintiff's physical condition. When reviewing expert reports, paralegals should compare each opinion to the expert's stated qualifications and determine whether the opinion falls within the expert's area of specialization.

Medical Records

Medical records frequently provide important evidence regarding injuries, treatment, causation, and damages. However, they often contain multiple levels of hearsay. A single record may include statements from the patient, observations by healthcare providers, and information supplied by third parties. When reviewing medical records, paralegals should watch for references to unidentified individuals, statements assigning fault for an accident, unexplained treatment gaps, or entries that appear inconsistent, incomplete, or altered.

Paralegals should determine whether the records can be authenticated and whether the necessary business-records or medical-records exceptions will apply. Particular attention should be paid to statements concerning causation, fault, or matters outside the provider's personal knowledge. Because many medical opinions require expert explanation, special attention should be given to diagnoses, causation opinions, and technical conclusions that may require supporting testimony from a healthcare provider or expert witness.

Business Records

Business records are frequently used to establish financial transactions, employment information, billing records, inventory data, and other routine business activities. Although business records are often admissible under a hearsay exception, they are not automatically admissible. It is important to determine whether a records custodian or other qualified witness will be available to establish the foundation necessary for admission.

Paralegals should be alert for records with no identifiable author, missing attachments, unexplained alterations, irregular formatting, or indications that the document was created specifically for litigation rather than in the ordinary course of business. Missing records, unexplained alterations, or irregular recordkeeping practices may create admissibility concerns.

Documents

Contracts, letters, reports, forms, and other paper documents should be reviewed for authenticity, completeness, and relevance. A document may appear important but still be inadmissible if its origin cannot be established or if portions of the document have been omitted. Missing signatures, initials, dates, or referenced attachments may signal authentication or foundation issues. Multiple versions of the same document, handwritten edits, unexplained changes, or uncertainty regarding the document's source may also create admissibility concerns. In addition, paralegals should be attentive to privileged communications and consider whether the document contains out-of-court statements that could raise hearsay objections.

Photographs and Videos

Photographs and videos can be highly persuasive evidence, but they must be authenticated before admission. A witness typically must establish that the image accurately depicts the relevant scene, object, or event.

During file review, paralegals should identify who created the image, when it was created, and whether it has been cropped, edited, enhanced, or otherwise modified. Missing information about the date, location, or source of the image may create foundation problems. Graphic or emotionally charged images should also be evaluated for potential objections based on unfair prejudice. As with documents and records, it is important to determine whether a witness is available to establish accuracy and authenticity of photographs and videos.

Electronic Evidence

Electronic evidence often includes electronically stored information (ESI), digital files, databases, device records, and system-generated data. Because electronic information can be modified, copied, or deleted, authentication is frequently a primary concern. Red flags include missing metadata, undocumented collection methods, incomplete chain-of-custody records, unexplained file modifications, or screenshots lacking supporting source data. Paralegals should review available metadata, identify who collected the information, and document how the evidence was preserved to help establish authenticity and reliability. Maintaining a clear record of custody is often critical.

Emails, Text Messages, and Social Media Evidence

Emails and text messages are common sources of evidence but often present both authentication and hearsay challenges. The fact that a message exists does not necessarily establish who created or sent it. Social media evidence presents many of the same challenges as emails and text messages, but authentication concerns are often greater. An account name alone may not establish authorship because accounts can be shared, hacked, or created by others. Screenshots should be viewed cautiously because they may not provide sufficient context or establish authenticity.

When reviewing communications, paralegals should identify evidence connecting the message to a particular sender and determine whether the content contains out-of-court statements being offered for their truth. Message threads should also be reviewed for context because partial communications may create misleading impressions. Paralegals should carefully review communications for incomplete message threads, missing messages, forwarded communications, shared accounts, nicknames, or other circumstances that create uncertainty regarding authorship.

Paralegals should be cautious when reviewing screenshots that lack identifying information, original source data, dates, or

context. Edited content, anonymous accounts, and highly inflammatory posts may create authentication, relevance, or unfair-prejudice concerns. Whenever possible, evidence linking the post to its purported author should be identified and preserved. Reviewing the entire conversation often helps identify hearsay issues and prevents misleading impressions created by isolated excerpts. Table 7.3.1 summarizes the common evidentiary challenges that can accompany different types of evidence.

Table 7.3.1: Challenges common to evidence

Type of Evidence	Common Challenges
Witness statements, testimony, expert reports	• Lack of personal knowledge • Hearsay • Speculation/Foundation • Improper opinion testimony • Witness competency/qualifications • Reliability of expert's methods • Scope of expert's opinions
Medical records	• Authentication • Hearsay within hearsay • Business-records foundation • Relevance • Expert testimony requirements
Business records	• Authentication • Hearsay • Business-records foundation • Completeness • Reliability concerns
Documents	• Authentication • Hearsay • Best evidence rule • Privilege • Completeness
Photographs and videos	• Authentication • Foundation • Accuracy • Relevance • Unfair prejudice
Electronic evidence (ESI)	• Authentication • Preservation and alteration concerns • Metadata issues • Chain of custody • Hearsay

Type of Evidence	Common Challenges
E-mails, text messages, and social media evidence	• Authentication • Identity of sender/creator • Hearsay • Relevance • Completeness • Alteration concerns

Evidence Audit Workflow

When reviewing a litigation file, paralegals should develop the habit of applying a consistent evidentiary review process to every significant piece of evidence. The following flowchart provides a practical workflow for identifying potential admissibility issues.

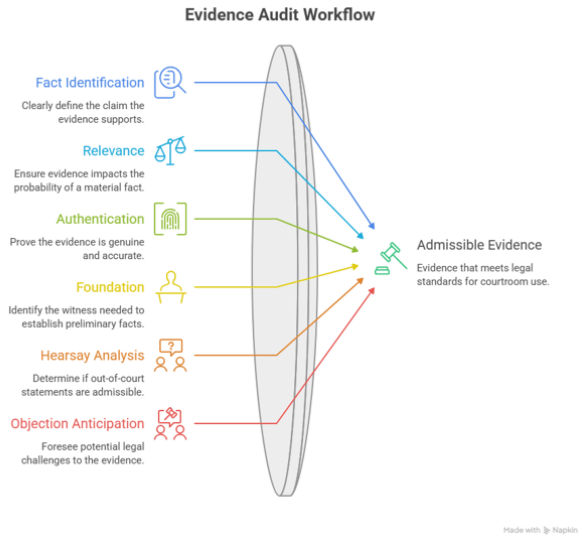

Figure 7.3.1: Evidence Audit Workflow. (Created with NapkinAI. Accessible version.)

When conducting an evidentiary review, think like opposing counsel. For every important exhibit, witness, or document, ask: **"If I wanted to keep this evidence out, what objection would I make?"** This simple question often reveals evidentiary weaknesses that can be addressed before trial and helps ensure that evidence gathered during discovery can ultimately be presented to the factfinder. Developing the habit of spotting these warning signs also allows the legal team to identify evidentiary problems early and allows time to gather additional foundation, obtain affidavits, locate witnesses, or develop alternative evidence.

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7.4: Key Takeaways

The Admissibility Framework

- The information obtained during discovery is not automatically admissible at trial. Before evidence may be presented to the court, it must satisfy the requirements established by the Wisconsin Rules of Evidence.
- Evidence may be classified as direct or circumstantial, real or demonstrative, and oral or documentary. Although these classifications do not determine admissibility, they help legal professionals identify the authentication, foundation, hearsay, and objection issues most likely to arise.
- Virtually every item of evidence can be evaluated using a four-part admissibility framework that asks whether the evidence is relevant, can be authenticated, is supported by a proper foundation, and is free from hearsay or other exclusionary rules.
- Relevance is the threshold requirement for admissibility. Evidence must relate to a fact of consequence in the case and have some tendency to make that fact more or less probable. Even relevant evidence may be excluded when its probative value is substantially outweighed by the danger of unfair prejudice, confusion, misleading the jury, undue delay, waste of time, or needless cumulative proof.
- Authentication requires the proponent to establish that evidence is what it is claimed to be. The method of authentication depends on the type of evidence involved and may require witness testimony, chain-of-custody evidence, distinctive characteristics, or other forms of proof.
- Foundation refers to the preliminary facts necessary to establish the reliability and admissibility of evidence. Different forms of evidence require different foundational showings, and identifying the necessary witness or records custodian is an essential part of trial preparation.
- Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is generally inadmissible unless an exemption or exception applies. Effective hearsay analysis requires identifying both the purpose for which the statement is offered and whether the declarant is available to testify.
- Many commonly used forms of evidence, including witness statements, medical records, business records, emails, text messages, social media posts, and reports, contain hearsay issues that must be carefully analyzed before trial.

Evidentiary Challenges

- Most evidentiary objections stem from a relatively small number of recurring concerns, including relevance, unfair prejudice, lack of authentication, lack of foundation, hearsay, speculation, lack of personal knowledge, improper opinion testimony, privilege, and violations of the best evidence rule.
- Recognizing the type of evidence involved often helps legal professionals predict the objections that are most likely to be raised and identify additional proof needed to support admissibility.
- Pretrial motions, including motions for protective orders, motions challenging expert testimony, and motions in limine, allow parties to address evidentiary issues before trial and obtain rulings regarding the admissibility of disputed evidence.
- Paralegals play an important role in evidentiary motion practice by reviewing discovery materials, organizing documents and exhibits, identifying potential objections, preparing supporting documentation, managing deadlines, and assisting with filing and service requirements.

Reviewing a Litigation File for Evidentiary Problems

- Effective review of a litigation file requires careful examination of witness testimony, expert reports, medical records, business records, documents, electronic evidence, communications, social media content, photographs, and videos for potential admissibility problems.
- Warning signs such as missing foundation, uncertain authorship, incomplete records, hearsay statements, altered documents, missing metadata, unsupported expert opinions, and gaps in chain of custody often signal potential evidentiary challenges that should be addressed before trial.
- Paralegals can identify and evaluate evidentiary issues by applying a consistent review process that asks what fact the evidence is intended to prove, whether it is relevant, how it will be authenticated, who will provide foundation, whether hearsay concerns exist, and what objections opposing counsel is likely to raise.

- Effective evidentiary analysis requires legal professionals to think proactively about admissibility throughout the litigation process so that evidentiary problems can be resolved before evidence is offered to the factfinder.

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7.5: Summary

Information obtained through discovery is not automatically admissible at trial. Before evidence may be presented to the factfinder, it must satisfy rules designed to ensure that it is relevant, reliable, and fair. Evaluating admissibility begins with four fundamental questions: Is the evidence relevant? Can it be authenticated? Has a proper foundation been established? Is it excluded by the hearsay rule or another evidentiary rule? This four-part framework provides a practical method for analyzing witness testimony, documents, photographs, recordings, electronic communications, and physical evidence.

Evidence may be classified as direct or circumstantial, real or demonstrative, and oral or documentary. While these classifications do not determine admissibility, they help legal professionals anticipate common evidentiary concerns. Relevance is the threshold requirement for admission, but even relevant evidence may be excluded if its probative value is substantially outweighed by risks such as unfair prejudice, confusion, or waste of time. Authentication establishes that evidence is genuine, foundation establishes the preliminary facts necessary for admission, and hearsay analysis determines whether out-of-court statements may be considered by the factfinder.

Many evidentiary disputes arise from a relatively small number of recurring objections, including relevance, unfair prejudice, lack of authentication, lack of foundation, hearsay, speculation, lack of personal knowledge, improper opinion testimony, privilege, and best-evidence objections. By understanding these common objections, learning to spot evidentiary problems associated with particular categories of evidence, and recognizing the admissibility issues that commonly accompany witness testimony, records, documents, electronic communications, photographs, videos, and expert opinions, paralegals can more effectively identify potential challenges before trial. Attorneys often address such issues through pretrial motions, including motions for protective orders, motions challenging expert testimony, and motions in limine, which seek advance rulings on disputed evidence.

Paralegals play a critical role in the evidentiary review process by systematically examining evidence for authentication issues, foundation gaps, hearsay concerns, privilege problems, and other admissibility defects. Effective review requires asking what fact the evidence is intended to prove, whether it is relevant, how it will be authenticated, who can provide foundation, whether hearsay concerns exist, and what objections opposing counsel is likely to raise. By combining a working knowledge of the rules of evidence with an understanding of common objections and the procedural tools used to raise them, paralegals can assist attorneys in preparing evidence, anticipating objections, responding to challenges raised by opposing counsel, and improving the likelihood that critical evidence will ultimately be admitted at trial.

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Terms with Definitions

Admissibility: The legal determination of whether evidence may be presented to the court for consideration.

Authentication: The process of establishing that evidence is what the proponent claims it to be.

Best Evidence Rule: The rule requiring the original writing, recording, or photograph, or an acceptable duplicate, when a party seeks to prove its contents.

Business Records: Records created and maintained in the ordinary course of business that may qualify for a hearsay exception if proper foundation is established.

Chain of Custody: Documentation showing the possession and handling of evidence to establish that it has not been altered, substituted, or tampered with.

Circumstantial Evidence: Evidence that requires the factfinder to draw one or more inferences to reach a conclusion regarding a disputed fact.

Competency: A witness's legal ability to testify in court.

Declarant: The person who made an out-of-court statement that may be subject to hearsay analysis.

Demonstrative Evidence: Evidence created to illustrate, explain, or clarify other evidence presented in a case.

Direct Evidence: Evidence that proves a fact without requiring the factfinder to draw additional inferences.

Documentary Evidence: Evidence presented in recorded form, including writings, photographs, videos, emails, text messages, and electronic records.

Electronic Evidence: Electronically stored information, digital files, communications, or data offered as evidence.

Evidence: Information presented to prove or disprove facts that are material to the resolution of a legal dispute.

Evidence Audit: A systematic review of evidence to identify admissibility issues, potential objections, and additional foundational requirements.

Expert Witness: A witness qualified by knowledge, skill, experience, training, or education to provide specialized opinions.

Foundation: The preliminary facts that must be established before evidence may be admitted.

Hearsay: An out-of-court statement offered to prove the truth of the matter asserted.

Hearsay Exception: A statutory or common-law provision that permits admission of otherwise inadmissible hearsay under specified circumstances.

Improper Opinion Testimony: Opinion testimony that exceeds the scope of the witness's qualifications or permissible testimony.

Lack of Foundation: An objection asserting that the preliminary facts necessary for admissibility have not been established.

Lack of Personal Knowledge: An objection asserting that a witness lacks firsthand knowledge of the matters about which they are testifying.

Metadata: Embedded electronic information that describes the characteristics, history, or management of a digital file.

Motion *in Limine*: A pretrial motion requesting a ruling on the admissibility of evidence before trial begins.

Motion to Exclude Evidence: A pretrial motion seeking to prevent specific evidence from being admitted at trial.

Motion for Protective Order: A motion requesting that the court limit or prohibit certain discovery to protect parties from undue burden, expense, or disclosure of protected information.

Opinion Testimony: Testimony expressing an inference, conclusion, or belief rather than a direct observation of facts.

Oral Evidence: Evidence presented through the testimony of witnesses.

Personal Knowledge: Knowledge gained through a witness's own observations or experiences.

Privilege: A legal protection that allows certain confidential communications to be withheld from disclosure or admission into evidence.

Probative Value: The ability of evidence to prove or disprove a fact of consequence in a case.

Real (Physical) Evidence: Tangible objects that played a role in the events giving rise to the litigation.

Relevance: The tendency of evidence to make a material fact more or less probable than it would be without the evidence.

Speculation: Testimony based on guesswork or assumptions rather than personal knowledge.

Unfair Prejudice: The risk that evidence will improperly influence the factfinder through emotion, bias, or other considerations unrelated to the issues in dispute.

Witness Statement: An oral or written account of facts provided by a person with knowledge of events relevant to a case.

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7.7: References

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8: PREPARING EVIDENCE FOR TRIAL

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8.0: Introduction

Competency: Prepare evidence for Trial.

Learning Objectives

- Evaluate available evidence to identify evidentiary strengths, weaknesses, gaps, and preparation needs for trial.
- Select the most effective evidence to prove disputed facts and support the theory of the case.
- Prepare witnesses for trial (coordinating communications, scheduling appearances, managing subpoenas, and following ethical guidelines for witness preparation).
- Prepare documentary and physical evidence for trial (evaluating exhibits for accuracy, completeness, usability, and evidentiary value/effectiveness at trial)
- Determine the authentication and foundation requirements necessary to admit proposed exhibits into evidence.
- Organize impeachment and rebuttal evidence to support effective witness examination and response to opposing evidence.
- Evaluate and prepare demonstrative evidence (and coordinate the development of demonstrative exhibits that help explain facts, evidence, and legal issues to the factfinder).
- Conduct an evidence readiness review to confirm that witnesses, exhibits, demonstrative evidence, authentication requirements, foundation requirements, and presentation technology are ready for trial.

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

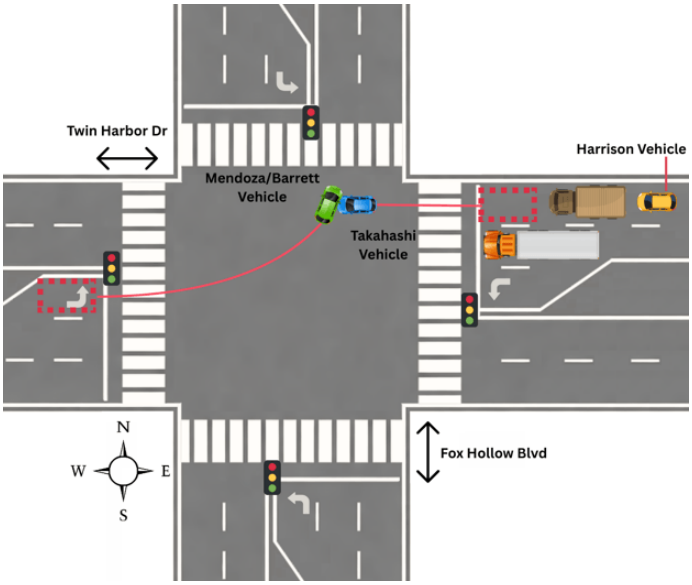

Figure 8.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

Trials are often portrayed as the centerpiece of civil litigation, and for good reason. They are the stage on which attorneys present evidence, examine witnesses, and ask the judge or jury to resolve the dispute. Although relatively few civil cases actually proceed to trial, those that do require extensive preparation and coordination. For the attorneys, witnesses, parties, and paralegals involved, the trial can be one of the most demanding and high-pressure phases of a case.

Successful trial preparation requires a thorough understanding of the facts, evidence, witnesses, and legal issues involved in the case. Attorneys must be prepared to present their client's position clearly and effectively while responding to unexpected developments that may arise during the proceedings. Paralegals play a critical role in this process. Through their work during discovery and pretrial preparation, paralegals often develop a detailed knowledge of the case and become an important resource for the trial team.

Although attorneys are responsible for trial strategy and courtroom advocacy, paralegals are frequently responsible for many of the practical tasks that make an effective presentation of evidence possible. They assist in evaluating evidence, preparing witnesses and exhibits, coordinating demonstrative evidence and technology, and ensuring that materials needed at trial are readily available. Effective paralegals also anticipate potential challenges, such as witness scheduling issues, evidentiary objections, or technology failures, and help develop contingency plans to address them. By helping ensure that evidence is organized, admissible, and ready for presentation, paralegals make a significant contribution to the trial team's success.

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8.1: Evaluating and Selecting Evidence for Trial

By the time a case is approaching trial, the parties have typically gathered a substantial amount of information through discovery. Depositions have been taken, documents have been exchanged, witnesses have been identified, and physical evidence has been examined. Not all of this information, however, will become trial evidence. One of the most important aspects of trial preparation is evaluating the available evidence and determining which exhibits and witnesses will most effectively prove the facts that matter to the case.

Paralegals play a significant role in this process. Working under attorney supervision, paralegals review discovery materials, compare competing evidence, identify weaknesses and gaps in proof, and help ensure that the evidence selected for trial supports the client's claims or defenses. Effective evidence preparation requires more than simply collecting information; it requires analyzing how that information fits within the overall theory of the case and whether it can be presented persuasively and efficiently at trial.

Using Existing Case-Management Tools to Evaluate Evidence

As you have learned in previous chapters, during discovery, paralegals often create proof charts, evidence logs, discovery indexes, document production logs, and similar organizational tools to track information as it is obtained. As trial approaches, these resources become effective evaluation tools.

Proof charts can help the trial team determine whether sufficient evidence exists to establish each required element of a claim or defense. Discovery responses, depositions, and document indexes can be reviewed to identify the witnesses, exhibits, and admissions that support particular facts. By comparing available evidence against the elements that must be proven at trial, the legal team can identify both strengths and weaknesses in the case.

This process may also reveal evidentiary gaps. For example, a proof chart may show strong evidence that a contract existed and that one party failed to perform its obligations, but little evidence establishing the amount of damages suffered by the plaintiff. Identifying such weaknesses early allows the attorney and paralegal to determine whether additional evidence should be gathered before trial.

Reviewing a Proof Chart

Below is the proof chart introduced earlier, as it might have developed during the discovery phase of the Mendoza fact scenario above. The chart organizes evidence according to the legal issues in dispute, identifies the sources of available evidence, anticipates potential evidentiary challenges, and highlights areas where additional investigation may be beneficial.

Cause of Action: Negligence

Table 8.1.1: A proof chart completed with cause of action facts from introductory fact scenario

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
1. Duty of due care	Drivers operating vehicles on public roadways have a duty to operate with reasonable care and obey traffic signals and right-of-way rules.	Wisconsin Statutes	Positive. Duty is unlikely to be disputed.	None anticipated.	Confirm traffic-control devices and signal configuration. Obtain traffic signal sequencing records to establish the duties imposed on drivers at this particular intersection.
2. Breach of duty	Takahashi entered the intersection and collided with a vehicle lawfully turning left, striking the passenger door of Mendoza's vehicle.	Accident scene evidence; vehicle damage location; police report observations; witness interviews.	Positive. Supports negligence by Takahashi and undermines Harrison's credibility.	Credibility attack on Penwald; speculation objection regarding estimates of speed.	Determine whether additional witness statements, traffic-camera footage, or vehicle data are available to corroborate witness observations. Obtain event data recorder (EDR) information, traffic-camera footage (if available), and additional witness statements regarding vehicle speed and traffic signal status.

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
3. Causation	Takahashi's entry into the intersection caused his vehicle to strike Mendoza's car, directly resulting in injuries to occupants.	Physical collision; timing and location of impact; accident reconstruction inference; police report observations; witness interviews.	Positive. Physical evidence corroborates witness testimony.	May require expert testimony regarding timing and vehicle movements.	Determine whether accident reconstruction evidence is needed to establish vehicle positions, timing, visibility, and avoidance opportunities.
4. Damages	Riley Barrett sustained severe injuries; Mendoza sustained lesser injuries; medical treatment required.	Medical records; party statements; employment records.	Positive. Damages appear substantial.	Defense may challenge causation, necessity of treatment, or future damages.	Obtain complete medical records, billing information, wage-loss documentation, and any expert opinions regarding future damages.

Defense: Contributory Negligence

Table 8.1.2: A proof chart completed with defense facts from introductory fact scenario

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
1. Duty of due care	Mendoza owed a duty to operate the vehicle safely and to yield when turning left unless there was a protected signal.	Traffic laws governing left turns at signalized intersections.	Positive for defense. Duty is unlikely to be disputed.		Determine the precise traffic-signal sequence and applicable traffic controls at the time of the collision. Obtain traffic engineering records confirming the operation of the left-turn signal at the time of the collision.

Element	Factual Support	Source	Impact (positive or negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
2. Breach of duty	Mendoza entered the intersection while another vehicle was proceeding straight through, resulting in a collision.	Police report; Takahashi's statement; point of impact evidence.	Foundation issues regarding signal phases and witness observations.		Determine whether Mendoza had a green arrow or permissive green signal. Obtain additional evidence regarding traffic conditions and vehicle positions. Obtain traffic-control records and any available signal sequencing data.
3. Causation	Mendoza's decision to initiate a left turn contributed to the collision and resulting injuries.	Physical evidence; sequencing of vehicle movements.	Competing interpretations of physical evidence.		Obtain accident reconstruction evidence addressing visibility, reaction time, and vehicle positioning immediately before impact.

Notice that the proof chart does more than simply list available evidence. It allows the trial team to evaluate the strengths and weaknesses of the case, identify evidentiary issues, and determine what additional preparation may be necessary before trial.

Analyzing a Proof Chart

When evaluating the evidence contained in a proof chart, the trial team should consider the strength, credibility, reliability, and persuasive value of each item of evidence. Several observations can be made from the chart.

First, the chart suggests that the plaintiff has strong evidence regarding the elements of duty and damages. Duty is unlikely to be disputed because all drivers owe a duty to operate their vehicles with reasonable care. Similarly, the existence of injuries appears to be supported by medical records and other documentation. As a result, the trial team may conclude that these elements present relatively little risk at trial. More significant disputes arise with respect to breach of duty, causation, and comparative negligence. Evidence regarding these issues comes from multiple sources, including witness testimony, physical evidence, and the parties' own statements. The legal team must therefore evaluate not only what the evidence shows, but also which evidence is likely to be viewed as the most persuasive by the factfinder.

One important consideration is whether evidence is direct or circumstantial. Direct evidence proves a fact without the need for additional inference, while circumstantial evidence requires the factfinder to draw conclusions from surrounding facts. In this case, Penwald's testimony regarding the actions of the drivers is direct evidence of his observations. By contrast, the location of the vehicle damage serves as circumstantial evidence from which the factfinder may infer the position and movement of the vehicles at the time of impact. Both forms of evidence may be valuable, but understanding the distinction helps the trial team

evaluate how particular facts may be proven at trial.

The credibility and reliability of evidence must also be considered. A neutral witness may be viewed as more credible than a party who has a personal interest in the outcome of the case. Here, Penwald's testimony may be particularly important because he appears to be an independent witness. Conversely, the proof chart reveals potential credibility problems with Harrison's testimony. Harrison's deposition testimony admitting inability to actually observe the signal status or the collision may significantly reduce the weight the factfinder gives to earlier statements suggesting otherwise. Identifying these credibility issues before trial allows attorneys to evaluate witness reliability and prepare for impeachment.

The proof chart also demonstrates the importance of corroborating evidence. Evidence becomes more persuasive when multiple sources support the same fact. For example, Penwald's account may be strengthened if the physical evidence, vehicle damage photographs, traffic-signal records, or expert analysis are consistent with his version of events. The trial team should therefore look for opportunities to corroborate important testimony whenever possible.

Conflicting evidence must be analyzed carefully as well. The plaintiff and defendant may offer different explanations of how the collision occurred, and witness recollections may differ from physical evidence or documentary records. A proof chart allows the legal team to compare competing sources of proof, assess their relative strengths, and determine which evidence is most likely to persuade the factfinder.

Finally, the proof chart highlights several evidentiary gaps that remain unresolved. Questions regarding traffic-signal timing, vehicle speed, and other collision circumstances could have a significant impact on both liability and comparative negligence. Identifying these gaps is an essential part of evidence evaluation because it allows the trial team to determine whether additional investigation is necessary before trial. In many cases, recognizing what evidence is missing is just as important as understanding the evidence already available.

Selecting the Most Effective Evidence for Trial

After evaluating the available evidence, the trial team must decide which evidence should actually be presented at trial. Because judges and jurors have limited time and attention, presenting every available witness and exhibit is rarely the most effective approach. Instead, attorneys and paralegals must identify the evidence that most clearly and persuasively proves the disputed facts in the case. In many situations, multiple pieces of evidence may prove the same fact, requiring the trial team to determine which evidence will communicate the information most effectively.

Documentary evidence, witness testimony, physical evidence, and demonstrative exhibits each serve different purposes and vary in their persuasive value. The goal is not to present every available item of evidence, but to select the combination of evidence that best supports the theory of the case and helps tell a clear, persuasive story about what happened and why the client should prevail. Evidence that advances that narrative is generally more valuable than evidence that is merely relevant but contributes little to proving the central issues.

Evaluating Discovery Materials for Trial Use

Discovery materials are often the primary source of trial evidence. As trial approaches, paralegals should carefully review deposition transcripts, interrogatory answers, requests for admission, and documents produced during discovery to identify the strongest evidence available to support the client's theory of the case and prove disputed facts at trial.

Practice Tip: Discovery Response Summaries

In large or complex cases, discovery responses may contain hundreds or even thousands of pages of information. To make that information easier to analyze, paralegals often prepare discovery response summaries. A discovery response summary condenses important information obtained through interrogatories, requests for admission, document production, and other discovery devices into a format that allows the legal team to quickly identify key facts, admissions, disputed issues, witnesses, and potential exhibits.

Discovery response summaries do not replace the original discovery materials. Instead, they serve as a roadmap that allows attorneys and paralegals to efficiently review information, compare evidence from multiple sources, identify inconsistencies, and determine what evidence may be useful at trial. As trial approaches, these summaries can be valuable tools for witness preparation, exhibit selection, impeachment planning, and overall case evaluation.

Table 8.1.3: Sample Discovery Response Summary

Issue	Discovery Source	Key Information	Potential Trial Use
Traffic signal status at time of collision	Takahashi Interrogatory Answers	Takahashi states he entered the intersection on a green light.	Supports defense theory; compare with witness testimony and signal records.
Traffic signal status at time of collision	Penwald Deposition	Penwald testified Mendoza had nearly completed the left turn when Takahashi accelerated into the intersection.	Supports plaintiff's negligence theory; may be used during direct examination.
Collision sequence	Harrison Deposition	Harrison admitted they did not actually observe the signal status or the collision.	Potential impeachment material; affects witness credibility.
Damages	Medical Records	Barrett sustained significant injuries requiring extensive treatment.	Supports damages element and potential economic and non-economic damages claims.
Comparative negligence	Takahashi Deposition	Takahashi contends Mendoza turned in front of them.	Supports comparative negligence defense; compare with physical evidence and other witness testimony.
Vehicle position at impact	Accident Scene Photographs	Passenger-side damage to Mendoza vehicle.	Physical evidence that may support accident reconstruction testimony and plaintiff's theory of the case.

Practice Note: Discovery response summaries may be organized by issue, witness, claim, defense, or chronology. Regardless of format, the goal is to allow the trial team to quickly locate critical facts, identify conflicting evidence, and determine how the information may be used during witness examination or the presentation of exhibits at trial.

During this review, paralegals should identify the facts that must be proven and determine what evidence is available to prove them. A variety of organizational tools can assist in this process. Document production indexes and document logs help locate important records within large discovery productions, while evidence logs help track documents, photographs, physical evidence, and electronically stored information that may be used at trial. Fact chronologies can assist in organizing events in a logical sequence and identifying gaps or inconsistencies in the available evidence. Depositions may reveal witnesses with personal knowledge of disputed facts, while interrogatory answers and requests for admission may establish facts that no longer require additional proof at trial. Documents produced during discovery, including contracts, correspondence, photographs, business records, text messages, and electronic communications, often become important trial exhibits.

Discovery review should also focus on identifying evidentiary weaknesses and potential challenges. Comparing deposition testimony, written discovery responses, and documentary evidence may reveal inconsistencies that affect witness credibility,

undermine factual assertions, or create opportunities for impeachment. Deposition summary charts, witness interview summaries, and discovery response summaries can help paralegals compare information from multiple sources and quickly identify conflicting statements or admissions. Similarly, unfavorable admissions, contradictory documents, or evidence supporting an opposing party's position should be identified early so the trial team can develop an effective response.

Finally, paralegals should begin categorizing evidence according to its anticipated use at trial. Witness lists and witness interview summaries can help identify which witnesses may be needed to establish particular facts, authenticate exhibits, or provide foundation testimony. Fact chronologies can help determine how evidence fits into the overall narrative of the case and assist in evaluating whether the available evidence adequately supports that narrative. Evaluating discovery materials in this manner helps ensure that the trial team can efficiently transition from evidence evaluation and selection to witness preparation, exhibit preparation, and final trial readiness review.

Strategic Considerations in Evidence Selection

After available evidence has been evaluated and discovery materials have been reviewed, the attorney must decide which evidence should actually be presented at trial. Although the attorney is ultimately responsible for these strategic decisions, paralegals play an important supporting role by organizing information, comparing available evidence, identifying potential concerns, and helping the attorney assess how particular witnesses and exhibits support the client's theory of the case.

One of the most important considerations is determining which evidence most effectively proves a disputed fact. In many cases, multiple witnesses, documents, photographs, or other exhibits may support the same point. Rather than presenting every available piece of evidence, attorneys typically seek to present the evidence that is most persuasive, credible, and understandable. Paralegals assist this process by comparing competing sources of proof, identifying unnecessary cumulative evidence, and helping the attorney select the combination of witnesses and exhibits that most clearly communicates the facts. While corroborating evidence can strengthen a case, presenting multiple witnesses or exhibits that merely repeat the same information may consume valuable trial time and reduce the impact of stronger evidence.

The type of evidence selected may also influence its effectiveness. Documentary evidence may establish a fact quickly and efficiently, while witness testimony may provide context, explanation, or credibility. Physical evidence can be particularly persuasive because it allows the factfinder to directly examine an item involved in the dispute. Paralegals can help attorneys evaluate the advantages and disadvantages of various forms of evidence, as well as the practical considerations associated with presenting them. Some evidence may be expensive to obtain, difficult to present, or require extensive foundation testimony, specialized technology, or additional witnesses. Understanding these requirements helps the attorney determine whether the evidentiary value justifies the time, cost, and effort required to use the evidence effectively at trial.

Potential evidentiary challenges should also be considered during the selection process. Evidence that initially appears highly persuasive may be less useful if admissibility is uncertain or significant foundation, authentication, or other evidentiary objections are anticipated. By identifying these concerns early, paralegals allow attorneys to gather additional supporting evidence, prepare alternative means of proof, or reconsider whether the evidence should be included in the trial presentation.

Practice Tip: Evidence Selection Checklist

Once evidence has been evaluated, the attorney must determine which witnesses and exhibits will be presented at trial. Paralegals can assist by using the following checklist to evaluate proposed evidence and identify issues that should be discussed with the supervising attorney.

Relationship to the Theory of the Case

- ◇ Does the evidence support a claim, defense, or key disputed fact?
- ◇ Does the evidence advance the client's theory of the case?
- ◇ Is the fact important to the outcome of the case?

Persuasive Value

- ◇ Is this the strongest available evidence for this fact?

- Is the evidence credible, reliable, and easy to understand?
- Is the evidence corroborated by other witnesses, documents, or exhibits?

Efficiency and Practicality

- Does this evidence add value, or is it merely cumulative?
- Can the fact be proven more effectively with another witness or exhibit?
- Are the time, cost, and effort required to present the evidence justified?

Anticipated Evidentiary Challenges

- Are relevance, hearsay, authentication, or foundation objections likely?
- Is alternative evidence available if this evidence cannot be admitted?
- If this evidence were excluded, would the case be materially weaker?

Ultimately, effective evidence selection requires both analysis and strategy. By helping attorneys compare competing evidence, identify practical and evidentiary concerns, and focus on the information that best advances the client's theory of the case, paralegals contribute to a trial presentation that is clear, organized, and persuasive.

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8.2: Preparing Witnesses and Exhibits for Trial

Once the trial team has evaluated the available evidence and selected the evidence most likely to support the client's theory of the case, the next step is preparing that evidence for presentation at trial. Even the strongest evidence may have little value if a witness is unavailable, an exhibit is incomplete, or the necessary foundation for admission has not been established. For this reason, trial preparation involves more than identifying persuasive evidence; it also requires ensuring that witnesses, documents, and physical evidence are organized, available, and ready for use in the courtroom.

Although attorneys are responsible for trial strategy and witness examination, paralegals frequently assist with the practical tasks necessary to prepare evidence for presentation. These tasks may include coordinating witness appearances, organizing exhibits, verifying the completeness and accuracy of documentary evidence, tracking physical evidence, and helping ensure that authentication and foundation requirements can be satisfied at trial.

Preparing Witnesses for Trial

Witnesses are often among the most important sources of trial evidence. As part of trial preparation, paralegals assist attorneys by identifying necessary witnesses, coordinating communications, scheduling appearances, and helping ensure that witnesses have the information needed to appear and testify as required.

Witness Identification, Coordination, and Support

Witness preparation typically begins by identifying the role each witness will play at trial. Some witnesses provide substantive testimony regarding disputed facts. Others may be called primarily to authenticate documents, establish foundation for exhibits, or provide specialized knowledge as expert witnesses. Understanding the purpose of each witness helps the trial team determine which witnesses are essential and what preparation is required.

The witness's role may also influence when and how the attorney chooses to present that witness at trial. In today's information-rich environment, factfinders are exposed to large amounts of information competing for their attention. As a result, attorneys often seek to present evidence in a manner that maximizes its impact while making efficient use of limited trial time. Witnesses who provide particularly compelling or important testimony may be scheduled at points during the trial when jurors are most attentive. Conversely, a witness whose testimony is necessary but less persuasive may be scheduled in a manner that minimizes its impact on the overall presentation.

When planning witness presentations, attorneys often consider juror attention levels. Jurors tend to be most attentive at the beginning and end of the case, at the beginning and end of each trial day, at the beginning and end of a witness's testimony, and immediately after short breaks. Understanding these patterns can help attorneys decide when certain testimony may be most effective. Although these strategic decisions are made by the attorney, paralegals frequently assist with implementing them by helping organize witness order, maintaining witness schedules, and coordinating witness availability throughout the trial.

Paralegals frequently coordinate and support witnesses throughout the trial process. This may involve confirming contact information, communicating scheduling changes, arranging travel or accommodations, monitoring witness availability, and ensuring that witnesses appear at the courthouse at the proper time. In many cases, paralegals serve as the primary point of contact, answering procedural questions and helping witnesses understand what to expect during their appearance. Because witnesses are often unfamiliar with courtroom procedures and may be anxious about testifying, paralegals can help reduce stress by explaining logistical details, coordinating transportation, and keeping witnesses informed about the trial schedule. By helping witnesses remain calm, focused, and available when needed, paralegals contribute to a smoother trial presentation and more effective testimony. If a witness is unwilling to appear voluntarily, the attorney may direct the paralegal to prepare and coordinate service of a subpoena.

Assisting with Witness Preparation Meetings

Before witness preparation meetings, paralegals often gather and organize exhibits, prior statements, deposition transcripts, and other materials the attorney will review with the witness. This ensures that both the witness and attorney have the information necessary for a productive preparation meeting.

One of the most important preparation tools is the witness's deposition transcript. If the witness was deposed during discovery, reviewing the transcript can refresh the witness's memory and remind the witness of both major and minor facts discussed during the deposition. Reviewing prior testimony may also identify areas that require clarification and reduce the likelihood of inconsistencies between deposition testimony and trial testimony. Paralegals should also ensure that all documents related to the witness's testimony are organized and available for review. If the witness prepared, received, or relied upon relevant documents, the attorney may review those materials with the witness before trial. Particular attention should be paid to dates, times, events, and the sequence in which events occurred. Witnesses should be familiar with records that may be shown to them during testimony and understand how those records relate to the facts they will discuss.

Witness preparation may also include helping the witness become familiar with the courtroom environment. When possible, attorneys may arrange for a witness to visit the courtroom before trial so the witness can become comfortable with the setting. Understanding where participants will sit, where the witness will testify, and how the trial process generally works can help reduce anxiety and increase confidence.

Once the witness understands the courtroom setting, the attorney may discuss courtroom demeanor and effective communication. Witnesses are generally encouraged to dress professionally but comfortably, listen carefully to each question, answer only the question asked, and speak clearly enough for the judge, jury, and court reporter to hear. Witnesses should be reminded to tell the truth at all times, avoid guessing when they do not know or remember an answer, and remain polite and respectful even when faced with difficult or aggressive questioning. Maintaining appropriate eye contact with the attorney, judge, and jurors can enhance credibility and engagement. Witnesses should also avoid becoming argumentative, angry, defensive, or sarcastic, as such behavior may negatively affect the factfinder's perception of their testimony.

Ethical Boundaries in Witness Support

Supporting witnesses is an important part of a paralegal's role. Paralegals may answer procedural questions, explain scheduling and courtroom logistics, assist with travel arrangements, and help witnesses feel more comfortable about the process of testifying. However, witness support must never become witness coaching. Although paralegals may review deposition testimony, prior statements, documents, or exhibits with a witness at the attorney's direction, the purpose of that review is to refresh the witness's recollection and familiarize the witness with the evidence, not to shape or alter the testimony.

Paralegals should avoid discussing how a witness should answer questions or what testimony would be most helpful to the client. If a witness seeks guidance regarding the substance of testimony, the witness should be referred to the supervising attorney. The paralegal's role is to help witnesses feel comfortable with the process of testifying, not with giving a particular answer. The goal is to help witnesses provide truthful testimony clearly, accurately, and confidently.

Preparing Documentary Exhibits

Although witness testimony is often an important part of a trial presentation, it frequently takes more than the spoken word of a witness to persuade the factfinder. Documentary exhibits can corroborate testimony, clarify complex facts, refresh recollections, and provide tangible proof of disputed issues. Contracts, correspondence, photographs, business records, medical records, financial records, emails, text messages, social media posts, and electronic communications are all common forms of documentary evidence. In many cases, a well-prepared exhibit can communicate information more clearly and persuasively than testimony alone.

Evaluating Documentary Exhibits

Paralegals should carefully review proposed exhibits for accuracy, completeness, usability, and evidentiary value. A document that was useful during discovery may not be suitable for presentation at trial if it is incomplete, difficult to read, improperly redacted, difficult to present, or contains information that should be excluded.

The paralegal's review often begins with a practical assessment of each proposed exhibit. Before presenting an exhibit to the attorney for final review, the paralegal should verify that the exhibit is complete, organized, and consistent with other case materials. For example, contracts should include all pages and attachments, medical records should be complete and in chronological order, and electronic communications should include sufficient context for the factfinder to understand the exhibit's significance. When evaluating documentary exhibits, paralegals should consider the questions below.

Accuracy and Completeness

- Does the exhibit accurately reflect the information it is intended to prove?
- Is the document complete, including attachments, exhibits, and referenced pages?
- Are all pages present, properly ordered, and legible?
- Are dates, names, and key facts consistent with other evidence in the file?
- Are any redactions necessary?

Usability

- Is the exhibit easy to read and understand?
- Are important passages highlighted or otherwise identified for the attorney's use?
- Will a witness be able to review and discuss the exhibit easily during testimony?
- Are photographs, charts, or diagrams clear and properly labeled?
- Will the exhibit display well if enlarged or presented electronically?

Evidentiary Value

- What fact does the exhibit help establish?
- Does the exhibit support a claim, defense, or key witness?
- Does it corroborate other evidence?
- Is it stronger or clearer than other available exhibits?
- Is it likely to assist the factfinder in understanding an important issue?

As part of this review process, paralegals should also note potential concerns and bring them to the attorney's attention. For example, a document may be difficult to authenticate, contain hearsay, be missing pages, or present foundation issues. Identifying these concerns before trial provides the attorney with an opportunity to address them and determine whether alternative evidence should be used.

Assisting with Selecting Effective Documentary Exhibits

Ultimately, the attorney determines which exhibits will be used at trial, but the paralegal's analysis can help ensure those decisions are informed by a thorough understanding of the evidence. By reviewing proposed exhibits for their evidentiary value, paralegals can help attorneys assess how particular documents support key facts, corroborate witness testimony, and advance the client's theory of the case. An exhibit may be accurate and admissible yet contribute little to proving a disputed issue. Conversely, a well-chosen exhibit may clarify complex facts, strengthen witness testimony, or provide compelling support for a critical element of a claim or defense.

Paralegals can also assist attorneys by comparing multiple exhibits that prove the same fact. Through their review of discovery materials and trial exhibits, paralegals are often well positioned to identify documents that are clearer, simpler, or more persuasive than competing exhibits. They may also identify exhibits that are repetitive, likely to confuse the factfinder, or add little value to the overall presentation. Although the attorney makes the final strategic decision regarding which exhibits to present, paralegals play an important role in organizing, evaluating, and presenting information that supports those decisions. In many cases, the clearest and simplest exhibit is also the most persuasive.

Organizing Documentary Exhibits

Once the attorney has selected the documentary exhibits to be used at trial, paralegals typically assist with organizing and maintaining those exhibits. Effective organization helps ensure that exhibits can be located quickly during witness examinations, objections, and other trial proceedings. As exhibits are finalized, paralegals should verify that each exhibit is properly labeled, organized, and consistent with any exhibit lists, exhibit logs, or other tracking systems used by the trial team. Maintaining organized files and clearly labeled copies reduces the likelihood of delays and confusion during trial. Paralegals should also confirm that all selected exhibits are available in their final form and that any necessary revisions, redactions, or substitutions have been completed. Attention to detail at this stage can prevent significant problems once trial begins.

Preparing Physical Evidence

Physical evidence consists of tangible objects that may be offered at trial, such as damaged products, tools, machinery, clothing, vehicle parts, samples, weapons, or other objects connected to the facts of the case. Unlike documentary evidence, physical evidence cannot simply be copied, reproduced, or stored electronically. As a result, preparing physical evidence for trial often requires careful attention to preservation, documentation, and accessibility.

Evaluating Physical Evidence

Paralegals should locate and inspect each item of physical evidence that may be used at trial. The goal is to ensure that the item is available, properly documented, and in substantially the same condition as when it was collected or examined. A practical review of physical evidence should include the following tasks:

Availability and Condition

- Locate the item, confirm where it is being stored, and confirm who currently has custody of the item.
- Verify that the item is in substantially the same condition as when it was collected
- Determine whether the item has been altered, repaired, damaged, or destroyed
- Document any changes in condition and notify the attorney immediately.

Supporting Documentation

- Confirm that photographs, measurements, inspection reports, testing results, and chain-of-custody records can be located.
- Verify that labels, inventory numbers, and identifying information are accurate and consistent throughout the file.
- Organize supporting documentation so it can be easily accessed during witness preparation and trial.

As with documentary exhibits, paralegals should identify and bring potential concerns to the attorney's attention. Missing chain-of-custody records, altered conditions, incomplete documentation, or logistical obstacles may affect whether the attorney ultimately decides to use the evidence at trial.

Assisting with Selecting Effective Physical Evidence

Ultimately, the attorney determines whether physical evidence will be presented at trial. Paralegals help inform that decision by identifying practical and evidentiary considerations. In some cases, the actual object may provide powerful evidence because it allows the factfinder to directly observe the item at issue. However, transportation difficulties, safety concerns, or courtroom limitations could make presenting the actual object impractical. In that case, photographs, measurements, diagrams, videos, or demonstrations may communicate the same information more effectively. For example, a damaged vehicle may be difficult to transport to the courthouse, while high-quality photographs and measurements may adequately illustrate the damage. By gathering information regarding the condition, availability, and presentation of physical evidence, paralegals help attorneys determine the most effective way to present the evidence to the factfinder.

Managing Physical Evidence

Physical evidence frequently requires more extensive management than documentary exhibits. Paralegals may be responsible for maintaining inventories, tracking locations, documenting transfers, coordinating inspections, and ensuring that evidence remains secure until trial.

Large, fragile, hazardous, or valuable items may require special storage arrangements. Careful management helps ensure that physical evidence remains available, documented, and ready for presentation at trial.

Authentication and Foundation Planning

Even the most persuasive exhibit cannot be used at trial unless it can be admitted into evidence. Although attorneys are

responsible for determining how exhibits will be authenticated and what foundation must be established, paralegals play an important role in helping ensure that the necessary witnesses, records, certifications, and supporting documents are available when needed.[1]

The focus at this stage is not on analyzing admissibility, but on confirming that the attorney will be able to satisfy those requirements at trial. As exhibits are reviewed, paralegals should identify how each exhibit will be authenticated, who will provide the necessary testimony, whether supporting records or certifications are available, and whether any potential foundation objections should be addressed before trial.

Many trial teams use authentication and foundation checklists to track this information. For each proposed exhibit, the checklist may identify the exhibit, the fact it is offered to prove, the anticipated method of authentication, the witness responsible for laying foundation, required supporting documents or certifications, and any anticipated objections. By organizing this information before trial, paralegals help attorneys avoid last-minute evidentiary problems and ensure that important exhibits are ready for admission when needed.

Practice Tip: Authentication and Foundation Review

A persuasive exhibit has little value if it cannot be admitted into evidence. Early identification of authentication and foundation requirements helps ensure that evidence selected for trial can actually be used when needed. For each proposed exhibit, ask:

- How will the exhibit be authenticated?
- Who will authenticate it?
- What foundation must be established?
- Are supporting records, certifications, or reports available?
- Have potential objections been identified?
- Does the attorney have everything needed to establish admissibility?

1. Authentication and foundation requirements were discussed in detail in the previous chapter. Wisconsin, authentication and self-authentication are governed primarily by Wis. Stat. §§ 909.01, 909.015, and 909.02 (2026), which provide comparable requirements for authentication and self-authentication of evidence.

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8.3: Organizing Impeachment and Rebuttal Evidence

After identifying the witnesses and exhibits that support the client's case, the trial team must also prepare for evidence that may be offered by the opposing side. Effective trial preparation requires anticipating conflicting evidence, credibility challenges, and alternative explanations that may arise during trial. Although the attorney determines impeachment and rebuttal strategy, paralegals play an important supporting role by identifying, organizing, and maintaining the evidence that may be needed to challenge witness credibility or respond to the opposing party's evidence.

Because impeachment and rebuttal evidence often emerges during the discovery phase, paralegals should begin identifying and organizing these materials as discovery responses are received and reviewed. Tools such as deposition summary charts, witness interview summaries, fact chronologies, and discovery response summaries can help track inconsistent statements, admissions, contradictory evidence, and potential rebuttal issues as they are uncovered. By flagging and organizing these materials early, paralegals help attorneys anticipate opposing arguments, evaluate credibility issues, and prepare effective responses well before trial.

Identifying and Organizing Potential Impeachment Evidence

Impeachment evidence is used to challenge a witness's credibility. A witness may be impeached with prior inconsistent statements, admissions, contradictory documents, photographs, electronic communications, or other evidence that casts doubt on the witness's testimony. One of the paralegal's most important responsibilities is identifying potential impeachment materials as discovery progresses. This often involves comparing deposition testimony, interrogatory answers, witness statements, and documentary evidence for inconsistencies. Potential impeachment evidence may include:

- Prior inconsistent deposition testimony
- Inconsistent interrogatory answers
- Admissions contained in requests for admission
- Witness statements that differ from anticipated trial testimony
- Contradictory documents, records, photographs, or electronic communications
- Evidence that conflicts with a witness's version of events

Once impeachment evidence has been identified, paralegals should organize it so it can be located quickly during trial. This often involves flagging inconsistent statements in deposition abstracts and summaries, recording important deposition page and line references, linking prior statements to the witnesses who made them, and cross-referencing witnesses with related exhibits and supporting documents. Paralegals should also identify the location of original source materials and maintain organized files containing the documents the attorney may need during witness examination. The goal is to ensure that impeachment evidence can be located and used quickly when a credibility issue arises during trial.

Applying Impeachment Analysis: The Mendoza Case

One way paralegals assist attorneys with witness examination is by identifying potential impeachment evidence and organizing it for quick use during trial. An impeachment chart can help the trial team compare a witness's statements from different sources, identify inconsistencies, and evaluate how those inconsistencies may affect credibility.

For example, in the Mendoza case, Harrison initially told investigators that westbound traffic had a red light at the time of the collision. During the deposition, however, Harrison admitted to not actually seeing the traffic signal or the collision. A paralegal reviewing the police report and deposition transcript should recognize this inconsistency and bring it to the attorney's attention as potential impeachment evidence.

Identifying and Organizing Potential Rebuttal Evidence

Rebuttal evidence is used to explain, contradict, or disprove evidence offered by the opposing party. Because attorneys often cannot predict exactly what testimony or exhibits the opposing side will present at trial, rebuttal evidence is frequently prepared as a contingency measure.

Paralegals can assist by identifying evidence that may become important if a particular defense is asserted or if an opposing witness provides unexpected testimony. Potential rebuttal evidence may include:

- Additional fact witnesses
- Expert testimony
- Documents and business records
- Photographs and videos
- Physical evidence
- Demonstrative exhibits

As rebuttal evidence is identified, paralegals should organize it according to the issue, claim, or defense it addresses. This often involves grouping related evidence together, maintaining cross-references among witnesses, exhibits, and disputed facts, and updating fact chronologies to reflect competing theories of the case. Paralegals should also ensure that supporting documents, photographs, reports, and other materials are complete, organized, and readily accessible. Because rebuttal evidence is often needed unexpectedly, the goal is to ensure that the attorney can quickly locate and use responsive evidence when opposing testimony or exhibits require a response.

Applying Rebuttal Analysis: The Mendoza Case

One way paralegals assist attorneys with rebuttal preparation is by anticipating defenses and identifying the evidence that may be used to respond to them. A rebuttal chart, similar to a proof chart, can help the trial team connect anticipated defense arguments with evidence that may be used to challenge, explain, or contradict those arguments.

For example, one likely defense argument in the Mendoza case is that Mendoza caused the collision by turning in front of oncoming traffic. To prepare for that possibility, the plaintiff's trial team may identify traffic-signal records, witness testimony, accident reconstruction evidence, photographs, and physical evidence that could be used to challenge that explanation. Organizing this information before trial allows the attorney to quickly locate and evaluate responsive evidence if the defense raises the issue.

The following rebuttal chart illustrates how the plaintiff's trial team might analyze anticipated comparative-negligence arguments and identify evidence that could be used to rebut them. Like a proof chart, a rebuttal chart can help attorneys evaluate potential strengths and weaknesses in the available evidence, identify evidentiary gaps, and determine whether additional investigation is needed before trial.

Table 8.3.1: Mendoza Rebuttal Chart

Defense Issue	Rebuttal Evidence	Source	Impact (Positive or Negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
Mendoza failed to yield before turning left.	Penwald testified that Mendoza had almost completed her turn while opposing traffic remained stopped and that Takahashi accelerated into the intersection after the signal changed. If believed, this suggests Mendoza reasonably entered the intersection and was already clearing it when the collision occurred.	Penwald deposition; police report.	Positive. Supports argument that Mendoza acted reasonably and that Takahashi caused the collision.	Credibility attack on Penwald; challenge to his ability to observe events.	Determine whether additional witnesses or physical evidence corroborate Penwald's account.
Mendoza turned in front of oncoming traffic.	Damage to the passenger side of Mendoza's vehicle suggests she had substantially completed the turn before impact. This may indicate that Takahashi entered the intersection after Mendoza was already committed to the turn.	Vehicle damage photographs; crash report; crash diagram.	Positive. Physical evidence may support plaintiff's version of events.	Objection that conclusions require expert interpretation.	Consider whether accident reconstruction testimony is necessary to explain vehicle placement and movement.

Defense Issue	Rebuttal Evidence	Source	Impact (Positive or Negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
Mendoza should have avoided the collision.	Evidence indicating that Takahashi accelerated rapidly into the intersection may support an argument that Mendoza had little or no opportunity to avoid impact once she committed to the turn.	Penwald deposition; witness testimony.	Positive. Reduces comparative fault attributed to Mendoza.	Witness observations regarding speed may be characterized as estimates or speculation.	Determine whether vehicle data, skid marks, or expert analysis are available to evaluate speed and reaction times.
Mendoza misjudged traffic conditions.	If traffic-signal records establish that Mendoza entered under a protected left-turn arrow, she may not have been required to yield to oncoming traffic at all.	Traffic engineering records; signal timing records.	Strongly positive if supported by additional evidence.	Foundation and authentication issues regarding signal records.	Obtain traffic-signal timing and sequencing records for the date and time of the collision.
Mendoza's conduct substantially contributed to the accident.	Harrison's admission that he did not actually observe the signal or collision may undermine testimony favorable to the defense. Weakening a key defense witness reduces support for comparative negligence arguments.	Harrison deposition.	Positive. Weakens defense evidence.	Defense may argue Harrison's testimony is not central to its theory.	Evaluate whether additional inconsistencies exist in Harrison's statements or testimony.

Defense Issue	Rebuttal Evidence	Source	Impact (Positive or Negative)	Anticipated Objection	Evidentiary Gaps / Additional Investigation Needed
Plaintiff's version is supported only by witness testimony.	Testimony from Penwald is potentially corroborated by vehicle damage patterns, intersection layout, and other physical evidence. Consistent evidence from multiple sources strengthens credibility and reliability.	Penwald deposition; photographs; crash diagram; police report.	Positive. Corroboration strengthens plaintiff's account.	Objections depend on foundation for photographs and physical evidence.	Identify additional corroborating evidence, including photographs, measurements, or expert analysis.

Notice that the rebuttal chart does more than simply identify evidence favorable to the plaintiff. It helps the trial team anticipate specific defense arguments, identify evidence that may be used to respond to those arguments, evaluate potential objections, and recognize areas where additional investigation may strengthen the rebuttal position. By organizing rebuttal evidence before trial, paralegals help ensure that the attorney can respond quickly and effectively when opposing testimony or exhibits require a response.

Unlike evidence presented during a party's case-in-chief, impeachment and rebuttal evidence is often prepared for contingencies that may never occur. Nevertheless, effective trial teams identify, organize, and maintain these materials well before trial. By helping attorneys anticipate credibility challenges and potential defenses, paralegals contribute to a more flexible and effective trial presentation.

At this point in the preparation process, the trial team should have identified the evidence it intends to present, prepared witnesses and exhibits, addressed authentication and foundation requirements, and organized potential impeachment and rebuttal materials. The next step is ensuring that all evidence is ready for presentation in the courtroom. This includes preparing demonstrative exhibits, coordinating exhibit presentation methods and courtroom technology, and conducting a final readiness review to confirm that witnesses, exhibits, and supporting materials will be available and functional when needed at trial.

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8.4: Confirming Readiness for Trial Presentation

By this stage of trial preparation, the trial team has evaluated and selected the evidence it intends to present, prepared witnesses and exhibits, addressed authentication and foundation requirements, and organized impeachment and rebuttal materials. The remaining task is to ensure that the evidence can be presented effectively in the courtroom. A carefully prepared exhibit has little value if it cannot be displayed, explained, accessed, or understood when needed.

While attorneys make the strategic decisions regarding how evidence will be presented, paralegals frequently coordinate the practical details that make an effective trial presentation possible. They assist with preparing demonstrative exhibits, selecting presentation methods, coordinating courtroom technology, and conducting final readiness reviews. The goal is to ensure that witnesses, exhibits, demonstrative aids, and technology work together to communicate the client's case clearly and persuasively.

Preparing Demonstrative Evidence

Not all evidence is presented through witness testimony, documents, or physical objects. In many cases, the legal team uses demonstrative evidence to explain facts, relationships, timelines, calculations, or other information that may be difficult for the factfinder to understand from testimony alone. Demonstrative exhibits can simplify complex information, highlight important facts, and help jurors retain information presented during trial. Common forms of demonstrative evidence include:

- Timelines
- Charts and summaries
- Maps and diagrams
- Accident-scene illustrations
- Anatomical drawings
- Financial summaries
- Enlarged photographs or documents
- Computer animations and simulations

Although demonstrative exhibits are often created specifically for trial, they should accurately reflect the underlying evidence and support the attorney's theory of the case. Paralegals frequently assist by gathering source materials, coordinating revisions, reviewing demonstratives for accuracy, and ensuring that supporting evidence is available if the demonstrative's accuracy is challenged. The most effective demonstrative exhibits are often the simplest. The purpose of a demonstrative aid is not to overwhelm the factfinder with information, but to explain important concepts clearly and efficiently.

Planning and Preparing Exhibit Presentation

Preparing exhibits for trial often involves more than reviewing their contents. The legal team must also determine how exhibits will be presented to the judge and jury. Depending on the nature of the exhibit, an item may be displayed electronically on a monitor or projection screen, enlarged and mounted on a display board, incorporated into a presentation, or distributed as individual paper copies. The attorney ultimately determines how exhibits will be presented, but paralegals typically assist by evaluating presentation options and coordinating the resources necessary to implement those decisions. Factors affecting the choice of presentation method may include the nature of the exhibit, the complexity of the information, the attorney's presentation preferences, available courtroom technology, cost considerations, and the needs of the factfinder.

Paralegals generally play four key roles in preparing and managing exhibit presentations. First, they use research, organizational, and technological skills to obtain and prepare exhibits in the format requested by the attorney. Second, they help ensure that exhibits meet the attorney's specifications and function properly during witness examination. Third, they assist in evaluating costs and identifying presentation methods that fit within the client's budget and available resources. Finally, they help ensure that exhibits are properly assembled, organized, and available when needed during trial.

The anticipated use of an exhibit should also influence how it is prepared. For example, if multiple witnesses will be asked to annotate an exhibit during testimony, a reusable or erasable format may be appropriate. Conversely, if each witness's annotations must be preserved, separate copies may be required. Considering these practical issues before trial can prevent unnecessary disruptions during witness examination.

Coordinating Courtroom Technology

Technology plays an increasingly important role in trial presentation. Electronic exhibit systems, presentation software, audio recordings, video evidence, and digital displays are now common features in many courtrooms.

As trial approaches, paralegals should determine what technology is available in the courtroom and whether additional equipment will be required. This may involve communicating with court personnel, reviewing local court procedures, or arranging access to courtroom technology before trial. Technology preparation often includes confirming the availability of monitors, projectors, and display screens; testing presentation software and electronic exhibits; verifying the compatibility of audio and video files; ensuring access to necessary power sources; and coordinating technical support when needed.

Technology failures can occur even when careful planning has taken place. For that reason, effective trial teams develop backup plans. Paralegals may assist by maintaining duplicate electronic files, bringing backup equipment, preparing printed copies of key exhibits, and ensuring alternative presentation methods are available if technology fails.

Conducting an Evidence Readiness Review

Before trial begins, the legal team should conduct a final review to confirm that all evidence is ready for presentation. This review allows attorneys and paralegals to identify and address potential problems before they arise in the courtroom. Particular attention should be paid to witness availability, exhibit organization, authentication and foundation requirements, demonstrative evidence, and courtroom technology.

The readiness review serves as the final opportunity to confirm that witnesses can be located, exhibits can be admitted, demonstrative aids accurately reflect the evidence, and presentation technology functions as expected. Any remaining deficiencies should be addressed before trial begins.

Practice Tip: Trial Presentation Readiness Checklist

A successful trial presentation depends not only on strong evidence, but also on careful preparation. The final readiness review helps ensure that witnesses, exhibits, demonstrative evidence, and technology are ready when needed in the courtroom.

Witnesses

- ☐ Witnesses have been identified and scheduled.
- ☐ Required subpoenas have been served.
- ☐ Witness preparation has been completed.
- ☐ Witness availability has been confirmed.

Exhibits

- ☐ Documentary and physical exhibits are complete and organized.
- ☐ Exhibit labels and tracking information are accurate.
- ☐ Final exhibit selections have been confirmed.
- ☐ Supporting records and reports are available.

Authentication and Foundation

- ☐ Authentication methods have been identified.
- ☐ Foundation witnesses have been identified.

- ☐ Required certifications and supporting documents are available.
- ☐ Potential objections have been reviewed.

Demonstrative Evidence

- ☐ Demonstrative exhibits are complete and accurate.
- ☐ Attorneys have approved final versions.
- ☐ Supporting source materials are available.

Technology

- ☐ Courtroom technology has been tested.
- ☐ Electronic exhibits function properly.
- ☐ Audio and video files are compatible.
- ☐ Backup copies and alternative presentation methods are available.

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8.5: Key Takeaways

Evaluating and Selecting Evidence for Trial

- Preparing evidence for trial involves much more than gathering documents and identifying witnesses. Effective trial preparation requires evaluating available evidence, identifying strengths and weaknesses, recognizing evidentiary gaps, and determining what additional preparation may be necessary before trial.
- Proof charts, chronologies, evidence logs, witness summaries, and other case-management tools help the legal team analyze evidence, match proof to claims and defenses, and identify areas where additional investigation or preparation may be needed.
- Not all admissible evidence should be presented at trial. Attorneys, with the support of paralegals, must select the evidence that most effectively proves disputed facts, supports the theory of the case, and communicates information clearly and persuasively to the factfinder.
- Discovery materials often provide the foundation for trial preparation. Careful review of depositions, interrogatory answers, requests for admission, and produced documents can reveal important admissions, evidentiary strengths and weaknesses, credibility concerns, and opportunities for impeachment.

Preparing Witnesses and Exhibits for Trial

- Paralegals play a significant role in preparing witnesses for trial by coordinating communications, scheduling appearances, managing subpoenas, organizing supporting materials, and assisting attorneys with witness preparation meetings.
- Witness preparation focuses on helping witnesses understand the trial process, become familiar with relevant facts and documents, and testify clearly and confidently. Witness support must remain within ethical boundaries and must never become witness coaching.
- Documentary exhibits should be evaluated for accuracy, completeness, usability, and evidentiary value. Effective exhibits are those that clearly support important facts, corroborate testimony, and advance the client's theory of the case.
- Physical evidence requires careful management throughout trial preparation. Paralegals help preserve, document, organize, and track physical evidence while ensuring that related records, photographs, reports, and chain-of-custody information are readily available.
- Authentication and foundation requirements should be addressed well before trial. By identifying necessary witnesses, certifications, records, and supporting documentation, paralegals help attorneys avoid evidentiary problems that could affect the admissibility of important exhibits.

Organizing Impeachment and Rebuttal Evidence

- Impeachment evidence is used to challenge the credibility of a witness, while rebuttal evidence is used to explain, contradict, or disprove evidence offered by the opposing party. Effective trial teams identify and organize both types of evidence during the discovery process rather than waiting until trial begins.

Confirming Readiness for Trial Presentation

- Demonstrative evidence can help explain complex facts, timelines, relationships, calculations, and other information that may be difficult to understand through testimony alone. The most effective demonstrative exhibits simplify important concepts and accurately reflect the underlying evidence.
- Successful trial presentations require careful planning regarding how exhibits will be displayed and used in the courtroom. Paralegals often assist with exhibit preparation, presentation logistics, vendor coordination, and technology planning.
- Technology has become an increasingly important part of trial practice. Testing equipment, verifying compatibility, and developing backup plans can help prevent disruptions during trial.

- A final evidence readiness review allows the legal team to confirm that witnesses, exhibits, demonstrative evidence, authentication requirements, foundation requirements, and presentation technology are fully prepared before trial begins.
- Effective trial preparation is both analytical and practical. By helping attorneys evaluate evidence, prepare witnesses and exhibits, organize impeachment and rebuttal materials, and confirm readiness for presentation, paralegals make a significant contribution to the successful presentation of a case at trial.

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8.6: Summary

Preparing evidence for trial is both an analytical and practical process. Before trial, the legal team must evaluate available evidence, identify strengths and weaknesses, recognize gaps in proof, and determine which witnesses and exhibits most effectively support the client's theory of the case. By systematically reviewing available evidence, paralegals can assist attorneys in identifying strengths and weaknesses in the case, prioritizing additional investigation, and selecting the most persuasive evidence for presentation at trial.

Paralegals play a vital role in preparing witnesses and exhibits for trial. This responsibility includes coordinating witness appearances, organizing supporting documents, reviewing documentary and physical evidence, and ensuring that exhibits are accurate, complete, and useful for trial. By helping attorneys locate, manage, and evaluate evidence, paralegals contribute significantly to the efficiency and effectiveness of trial preparation.

Witness preparation requires careful planning and ongoing communication. Paralegals often assist with scheduling, subpoenas, logistics, and witness support, while attorneys prepare witnesses for testimony and courtroom procedures. Although paralegals play an important role in witness preparation and support, they must always work under attorney supervision and remain within appropriate ethical boundaries. A paralegal may assist with preparing a witness for the trial process, but may never coach, influence, or encourage a witness to provide inaccurate, misleading, incomplete, or false testimony.

Successful trial preparation also requires identifying and organizing evidence that may be needed to respond to the opposing party's case. By reviewing discovery materials, maintaining summaries and chronologies, and organizing impeachment and rebuttal evidence, paralegals help attorneys anticipate credibility challenges, respond to competing evidence, and adapt to developments that arise during trial.

Finally, evidence preparation does not end when witnesses and exhibits have been selected. Demonstrative exhibits, presentation methods, courtroom technology, authentication requirements, and foundation requirements must all be carefully reviewed before trial begins. Through planning, organization, attention to detail, and effective communication, paralegals help ensure that evidence is not only available and admissible, but also ready to be presented clearly, efficiently, and persuasively when it matters most.

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Terms with Definitions

Chain of Custody: Documentation showing the possession, handling, and location of physical evidence from collection through trial.

Corroborating Evidence: Evidence that supports, confirms, or strengthens other evidence or testimony.

Discovery Response Summary: An organized synopsis of information obtained through discovery that helps identify key facts, admissions, issues, witnesses, and exhibits.

Impeachment Evidence: Evidence used to challenge the credibility or reliability of a witness's testimony.

Rebuttal Evidence: Evidence used to explain, contradict, or disprove evidence presented by the opposing party.

Trial Presentation Readiness Review: A final review conducted to confirm that witnesses, exhibits, demonstrative evidence, authentication requirements, foundation requirements, and presentation technology are prepared for trial.

Witness Preparation: The process of helping a witness understand courtroom procedures and review relevant facts and documents before testifying.

Witness Support: Logistical and procedural assistance provided to witnesses before and during trial without influencing their testimony.

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8.8: References

1. Wis. Stat. § 909.01 (2025). [docs.legis.wisconsin.gov/statutes/statutes/909/01]
2. Wis. Stat. § 909.015 (2025). [docs.legis.wisconsin.gov/statutes/statutes/909/015]
3. Wis. Stat. § 909.02 (2025). [docs.legis.wisconsin.gov/statutes/statutes/909/02]

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9: THE PRETRIAL CONFERENCE

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9.0: Introduction

Competency: Draft documents relating to a civil pretrial conference.

Learning Objectives

- Describe the topics typically covered in a pretrial conference
- Explain the function of a Wisconsin Special Verdict
- Produce a Special Verdict tailored to a hypothetical client case that complies with Wisconsin statutory requirements
- Explain the function of Wisconsin jury instructions
- Produce Proposed Jury Instructions tailored to a hypothetical client case that complies with Wisconsin statutory requirements
- Explain the paralegal's role with respect to preparing for a pretrial conference

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

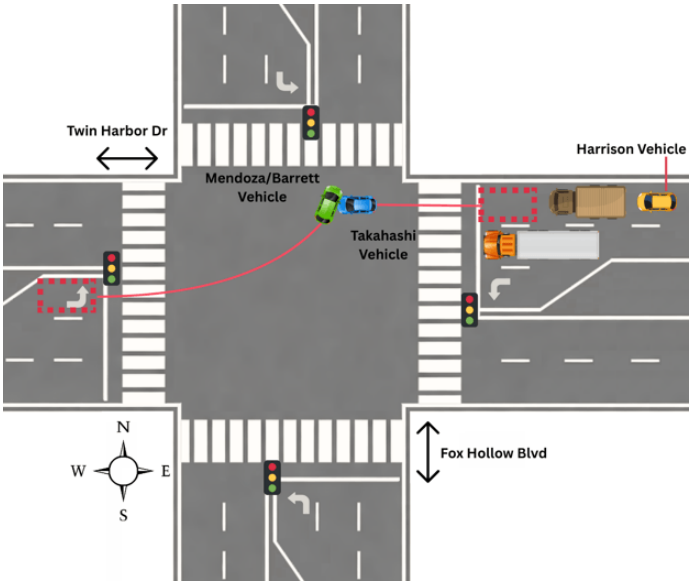

Figure 9.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

By the time a case reaches the pretrial conference stage, the parties have typically completed discovery, evaluated the available evidence, identified witnesses, and prepared for trial. Much of the investigation and information-gathering work is now finished. The focus shifts from developing the case to refining it, narrowing the issues in dispute, addressing evidentiary and procedural concerns, and ensuring that the parties are prepared to proceed to trial.

In many ways, the pretrial conference is similar to the final preparations before opening night of a theatrical production. The script has been written, the cast has been selected, the stage has been built, and rehearsals have been completed. What remains is ensuring that everyone understands their role, resolving any remaining problems, and making final adjustments before the performance begins. Likewise, the pretrial conference allows the court and the parties to address unresolved issues, streamline the presentation of evidence, and confirm that the case is ready for trial.

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9.1: The Purpose and Scope of the Pretrial Conference

In Wisconsin civil litigation, the pretrial conference marks the transition from trial preparation to trial presentation. By this stage of the case, discovery has generally been completed, the evidence has been evaluated, and the parties should have a clear understanding of the claims, defenses, and issues that remain in dispute. The purpose of the pretrial conference is to ensure that the case is ready for trial and to address matters that will facilitate the "just, speedy and inexpensive disposition" of the action. Wis. Stat. § 802.10(5) (2025). Wisconsin courts have broad authority to address issues affecting the efficient management and resolution of the case.

The pretrial conference also provides an opportunity for the court and the parties to discuss settlement. Because discovery has been completed and the strengths and weaknesses of the case are generally known, the parties are often in a better position to evaluate settlement possibilities than they were earlier in the litigation. Even when settlement is unlikely, these discussions may help clarify the parties' positions, narrow areas of disagreement, and identify issues that remain contested.

If the case does not settle, one of the court's primary objectives is to narrow the issues that must be decided at trial. Through stipulations, admissions, and agreements concerning undisputed facts, the parties may eliminate matters that no longer require proof. Simplifying the issues in this manner allows the trial to focus on the factual and legal questions that genuinely remain in dispute and promotes a more efficient presentation of evidence. Wisconsin law specifically authorizes courts to address these matters during the pretrial conference. Wis. Stat. § 802.10(5)(a)-(c) (2025).

The court may also address evidentiary and procedural issues that could affect the conduct of the trial. These discussions may involve pending motions, anticipated evidentiary objections, stipulations regarding exhibits, authentication concerns, or other matters that can be resolved before jurors are called. Wis. Stat. § 802.10(5)(d), (h) (2025). Final pretrial conferences also frequently include discussion of witness lists, exhibit lists, stipulations, proposed jury instructions, proposed special verdict forms, scheduling matters, and other issues affecting the management of the trial. Courts may also address the anticipated length of trial, witness availability, exhibit presentation, courtroom technology, and other logistical concerns. *Civil Procedure Before Trial, Wisconsin*, Vol 2 § 12.37-12.56 (C. Final Pretrial Conference [§ 12.37] | Civil Procedure Before Trial, Wisconsin, Vol 2 | State Bar of Wisconsin). Attorneys should also arrive prepared to discuss proposed verdict forms, jury instructions, evidentiary issues, and trial-management matters that may affect how the case will be presented to the jury. Addressing these issues in advance may reduce delays, interruptions, and unnecessary disputes during trial.

The pretrial conference serves as the court's final opportunity to meet with the parties before trial begins. Although procedures vary by jurisdiction and judge, the primary objectives are to identify and resolve issues that may interfere with an efficient trial, narrow the issues that remain in dispute, and confirm that the case is ready for presentation.

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9.2: Preparing Materials for the Pretrial Conference

A significant portion of pretrial conference preparation involves organizing and drafting documents that help define the scope of the trial. Attorneys rely on witness lists, exhibit lists, stipulations, proposed special verdict forms, and proposed jury instructions to identify disputed issues, streamline the presentation of evidence, and assist the court in managing the case efficiently.

Paralegals frequently assist in preparing and organizing these materials. By ensuring that the information is accurate, complete, and readily available, paralegals help attorneys prepare for meaningful discussions during the pretrial conference and position the case for an orderly and efficient trial.

Witness List

A witness list identifies the individuals a party may call to testify at trial. It helps the court and opposing counsel understand who is expected to provide testimony and assists with scheduling, trial management, and preparation. Witness lists also help ensure that the parties have adequate notice of the witnesses who may be called at trial.

Wisconsin Statutes do not dictate witness list contents or disclosure deadlines; rather, these requirements are often established through the court's scheduling order and local court rules governing pretrial procedures. Thus, the legal team should carefully review the scheduling order, local court rules, and any pretrial conference requirements to determine what witness information must be disclosed and when it must be provided.

Depending on the court's requirements, parties may be required to disclose the names of lay and expert witnesses, contact information, summaries of anticipated testimony, expert reports, and other information necessary to prepare for trial. Failure to timely disclose witnesses may result in limitations on the use of those witnesses at trial and imposition of other sanctions. Wis. Stat. § 802.10(7) (2025).

Paralegals frequently play a significant role in preparing witness lists. This process often begins by reviewing the evidence, pleadings, discovery responses, witness interview summaries, deposition transcripts, and proof charts to identify individuals whose testimony may be necessary at trial. Once potential witnesses have been identified, the paralegal may verify contact information, confirm witness availability, determine whether subpoenas are necessary, and assist the attorney in evaluating whether each witness remains necessary to prove a disputed fact.

Practice Tip: The Witness List

An accurate witness list helps prevent scheduling problems and ensures that the trial team is prepared to present the testimony needed to support its case.

Before submitting a witness list, confirm that:

- Each witness is necessary to prove a disputed fact or authenticate an exhibit.
- Contact information is current and complete.
- Witness names are spelled correctly.
- Fact and expert witnesses are clearly identified.
- Subpoena requirements have been addressed.
- Witness availability has been confirmed.
- The witness list complies with the court's scheduling order, local rules, and pretrial requirements.

Exhibit List

An exhibit list identifies the documents, photographs, recordings, physical objects, and other items a party may offer into evidence at trial. It helps the court and opposing counsel understand the evidence that may be presented and assists with trial planning and case management. Similar to the witness list, exhibit list content and filing requirements are often established through the court's scheduling order and local court rules governing pretrial procedures.

Exhibit lists identify each proposed exhibit by number or letter, provide a brief description of the item, and may include information regarding objections, stipulations, or admissibility. Depending on the court's requirements, separate exhibit lists may be prepared for documentary exhibits, physical exhibits, and demonstrative exhibits. In Wisconsin, exhibit-marking practices are often governed by the court's scheduling order, local rules, or the judge's pretrial procedures rather than a single statewide numbering system. Attorneys and paralegals should therefore review the applicable requirements before assigning exhibit numbers or labels. The Wisconsin Court System provides a standardized exhibit list form, GF-102 Exhibit List, which may be used to identify exhibits and track their status during trial.

The GF-102 Exhibit List is a standardized form used by the Wisconsin court system to identify and track exhibits throughout a hearing or trial. In addition to listing exhibit numbers and descriptions, the form contains columns that allow the court and the parties to record whether an exhibit was offered, received into evidence, withdrawn, or denied. The form also includes sections for tracking the management and disposition of exhibits after trial, making it both an exhibit list and an exhibit-management tool. While this form is typically used by the courtroom clerk during the trial, it can be a useful tool for the legal team to track and manage exhibits.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Caption:

Exhibit List
☐ Continuation

Case No. _____

Type of Hearing _____ Date of Hearing _____

Exhibit Information							Exhibit Management			
Number	Description	Offered By	Received	Withdrawn	Denied	Original for Court Inspection	Biological Material	Storage Location	Return Date / To Whom	Date Destroyed

Figure 9.2.1: Excerpt from Wisconsin Circuit Court form GF-102

Paralegals frequently assist with preparing exhibit lists by reviewing the evidence compiled during discovery, comparing proposed exhibits with proof charts and witness lists, and confirming that each exhibit has been accurately described and properly identified. They may also verify that exhibits are complete, organized, and consistent with the attorney's trial strategy. As trial preparations progress, exhibit lists should be reviewed and updated to reflect stipulations, evidentiary rulings, and changes in the exhibits the attorney intends to offer at trial.

Practice Tip: The Exhibit List

An accurate exhibit list helps the trial team manage evidence efficiently and reduces the likelihood of confusion or delay during trial.

Before submitting an exhibit list, confirm that:

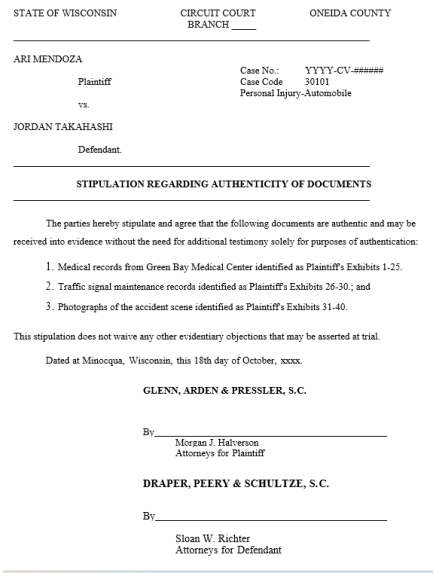
- Each exhibit is relevant to a disputed issue or anticipated witness testimony.

- Exhibit numbers or letters are accurate and consistent.
- Exhibit descriptions are clear and complete.
- Exhibits are organized and readily accessible.
- Duplicate or unnecessary exhibits have been removed.
- Potential objections or stipulations have been noted.
- The exhibit list complies with the scheduling order and pretrial requirements

Stipulations

Because one of the primary goals of a pretrial conference is to narrow the issues for trial, stipulations are often discussed extensively during pretrial preparation. A stipulation is an agreement between the parties concerning a fact, issue, document, or procedural matter. Stipulations allow the parties to eliminate matters that are not genuinely disputed, reducing the amount of evidence that must be presented at trial and allowing the jury to focus on the issues that remain contested.

Common stipulations may involve the authenticity of documents, the admissibility of business records, the identity of the parties, the occurrence of certain events, the amount of medical bills, or other facts that are not reasonably in dispute. By obtaining stipulations whenever appropriate, attorneys can reduce the number of witnesses needed at trial, shorten the presentation of evidence, and avoid unnecessary expense.



STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ ONEIDA COUNTY

ARI MENDOZA
Plaintiff
vs.
JORDAN TAKAHASHI
Defendant.

Case No.: YYYY-CV-######
Case Code 30101
Personal Injury-Automobile

STIPULATION REGARDING AUTHENTICITY OF DOCUMENTS

The parties hereby stipulate and agree that the following documents are authentic and may be received into evidence without the need for additional testimony solely for purposes of authentication:

1. Medical records from Green Bay Medical Center identified as Plaintiff's Exhibits 1-25.
2. Traffic signal maintenance records identified as Plaintiff's Exhibits 26-30.; and
3. Photographs of the accident scene identified as Plaintiff's Exhibits 31-40.

This stipulation does not waive any other evidentiary objections that may be asserted at trial.

Dated at Minocqua, Wisconsin, this 18th day of October, xxxx.

GLENN, ARDEN & PRESSLER, S.C.

By_____
Morgan J. Halverson
Attorneys for Plaintiff

DRAPER, PEERY & SCHULTZE, S.C.

By_____
Sloan W. Richter
Attorneys for Defendant

Figure 9.2.2: Sample stipulation

Paralegals often assist attorneys by reviewing discovery materials, witness lists, and exhibit lists to identify potential stipulations. They may also help draft proposed stipulations and ensure that agreed-upon stipulations are accurately reflected in pretrial submissions or orders. Effective use of stipulations can shorten the trial, reduce costs, and streamline the presentation of evidence.

Practice Tip: Considering Potential Stipulations

Effective stipulations save time, reduce costs, and allow the trial to focus on the issues that actually remain in dispute.

Before the pretrial conference, consider:

- Are there facts that neither party genuinely disputes?
- Can the authenticity of documents be stipulated?
- Can the admissibility of records or exhibits be stipulated?
- Would a stipulation reduce the need for witness testimony?
- Have all proposed stipulations been reviewed and approved by the attorney?

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9.3: Wisconsin Special Verdicts

In Wisconsin, civil cases are submitted to the jury using a special verdict rather than a general verdict. A special verdict requires the jury to answer specific questions concerning disputed facts rather than simply deciding which party wins the case. Wis. Stat. § 805.12(1) (2025).

The special verdict serves as the framework for the jury's deliberations by identifying the factual questions the jury must answer to resolve the case. For example, in a negligence case, the jury may be asked whether a defendant was negligent, whether that negligence caused the plaintiff's injuries, whether the plaintiff was also negligent, and the amount of damages sustained. The court then applies the law to the jury's factual findings and enters judgment accordingly. Because each question addresses a particular factual issue, special verdicts help focus the jury's attention on the elements of the claims and defenses presented at trial. They also provide a clear record of the jury's factual findings, which may be important if post-trial motions or appeals arise.

Drafting Special Verdict Questions

Because the special verdict is closely connected to the evidence presented at trial, attorneys frequently begin thinking about the verdict form long before trial. Every question included in the verdict should correspond to a factual issue that must be proven to establish a claim, defense, or affirmative defense.

Special verdict questions should not be drafted in isolation. Instead, they should be developed by working backward from the legal claims and defenses at issue in the case. A useful starting point is to identify the elements the plaintiff must prove to prevail and the elements the defendant must prove to establish any affirmative defenses. The verdict form should then focus on the disputed factual issues the jury must resolve to determine whether those elements have been satisfied. The same analysis applies to affirmative defenses. If the defendant asserts comparative/contributory negligence, the trial team should review the elements of that defense and identify the factual issues the jury must resolve.

Proof charts can be valuable tools during this process. Because a proof chart organizes evidence according to the elements of the parties' claims and defenses, it helps the trial team identify the factual questions that may belong in the special verdict. By comparing the proof chart to the elements that must be proven at trial, attorneys and paralegals can determine which issues remain disputed and therefore require jury findings.

Special verdict questions should be clear, concise, and limited to genuinely disputed factual issues. Questions should avoid unnecessary legal terminology whenever possible and should be arranged in a logical order that reflects the elements of the claims and defenses. A negligence case, for example, often follows a sequence addressing negligence, comparative negligence, causation for each, and damages.

In many respects, the special verdict functions as a roadmap for trial. By identifying the factual questions the jury must answer, the verdict form helps the trial team determine what evidence will be needed to support those answers. Reviewing the proposed verdict before trial can therefore help attorneys evaluate whether sufficient evidence exists to support each element of the claims and defenses, what witnesses and exhibits will be needed to support them, and whether additional preparation may be necessary.

Paralegals frequently assist attorneys in this process by reviewing proof charts, pleadings, discovery materials, and proposed jury instructions; identifying disputed elements; locating supporting evidence; and ensuring that each proposed verdict question corresponds to an issue that must ultimately be decided by the jury. Generally, every special verdict question should be traceable to a disputed element of a claim or defense and supported by evidence the parties intend to present at trial. If a proposed question cannot be connected to a disputed issue in the case, the trial team should carefully consider whether the question belongs in the verdict at all.

Applying Special Verdict Analysis: The Mendoza Case

Assume the Mendoza case proceeds to trial on claims of negligence and comparative negligence. Before drafting a proposed verdict form, the attorney and paralegal should review the pleadings, proof chart, discovery materials, and other evidence to identify the factual issues that remain in dispute. The resulting verdict should include only those questions necessary to resolve those disputed issues and allow the court to apply the law to the jury's findings.

The plaintiff's negligence claim requires proof of duty, breach, causation, and damages. However, not every element necessarily requires a separate verdict question. The proof chart indicates that duty is unlikely to be disputed because all drivers owe a duty to operate their vehicles with reasonable care. Accordingly, a question regarding duty may be unnecessary. By contrast, the parties vigorously dispute whether Takahashi breached that duty and whether his conduct caused the collision and resulting injuries. Those factual issues are therefore likely candidates for special verdict questions.

The same analysis applies to the defendant's comparative-negligence defense. Because the defense contends that Mendoza's own conduct contributed to the collision, the verdict must include questions that allow the jury to determine whether Mendoza was negligent, whether that negligence was a cause of the accident, and, if both parties were negligent, the percentage of causal negligence attributable to each. These questions are necessary because they directly relate to the elements of the affirmative defense and affect the parties' respective liability.

By reviewing the proof chart in this manner, the trial team can connect the elements of the claims and defenses to the factual findings the jury must make. The proposed verdict then becomes a roadmap for both trial preparation and jury deliberations, ensuring that each question corresponds to a disputed issue supported by evidence presented at trial.

Practice Tip: Paralegal Checklist for Proposed Special Verdict

A well-drafted special verdict helps focus the jury's deliberations and ensures that the factual findings necessary to resolve the case are clearly presented and answered.

Before submitting a proposed verdict form, confirm that:

- Each question addresses a disputed factual issue.
- Each question is supported by the evidence.
- The questions reflect the elements of the claims and defenses.
- The questions are arranged in a logical order.
- The wording is clear and easy for jurors to understand.
- The verdict is consistent with the attorney's theory of the case

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9.4: Wisconsin Proposed Jury Instructions

In addition to proposed special verdict forms, attorneys frequently prepare and submit proposed jury instructions before trial. Jury instructions are directions given by the court that explain the legal principles applicable to the case and provide the framework the jury must use when evaluating the evidence. Wis. Stat. § 805.13(3), (4) (2025). Because jurors are responsible for deciding facts rather than determining the law, the court instructs them on the legal standards governing the claims, defenses, burdens of proof, and damages issues presented at trial. While the special verdict identifies the factual questions the jury must answer, the jury instructions explain the legal rules the jury should apply in reaching those answers.

Drafting the Proposed Jury Instructions

When drafting proposed jury instructions, attorneys should begin by identifying the legal theories that will be submitted to the jury and then determine which instructions are necessary to explain those issues. The proposed instructions should correspond to the evidence presented at trial, the parties' claims and defenses, and the questions contained in the proposed special verdict.

The Wisconsin Civil Jury Instructions, developed by the Wisconsin Civil Jury Instructions Committee, serve as the primary resource for attorneys drafting proposed jury instructions. Wisconsin Civil Jury Instructions - Wisconsin State Law Library. Organized by subject matter and arranged numerically, the instructions allow legal professionals to efficiently locate guidance relevant to the issues presented in a case. The collection covers many areas commonly encountered in civil litigation, including burdens of proof, negligence, damages, contracts, torts, products liability, employment law, and numerous other substantive and procedural topics. For many cases, these pattern instructions provide the starting point for preparing proposed jury instructions.

Each instruction addresses a specific legal principle or concept that may need to be explained to the jury. For example, one instruction may define negligence, another may explain the burden of proof, and another may describe how damages should be calculated. Rather than creating instructions from scratch, attorneys often begin by locating the pattern instructions that correspond to the claims, defenses, and issues in the case.

The numerical organization makes it easier to identify related instructions. For instance, the lower-numbered instructions include many of the general instructions given in a wide variety of cases, such as instructions regarding juror duties, opening instructions, burdens of proof, and the handling of evidence. More specialized instructions are grouped within subject areas addressing particular causes of action or damages issues. This organization allows legal professionals to move efficiently from broad legal concepts to the specific instructions applicable to a particular case.

Although the Wisconsin Jury Instructions provide guidance for many common situations, they are intended to serve as starting points rather than language that must be used exactly as written. As a result, attorneys often modify existing instructions or draft additional instructions when the facts, claims, or defenses in a case are not adequately addressed by a pattern instruction. Bracketed language within an instruction often indicates where the user should select among alternatives or insert case-specific information. In addition to the instruction itself, many pattern instructions contain comments, notes, and explanatory materials that discuss special conditions for use, cautionary considerations, and related instructions. These materials can be especially helpful when deciding whether an instruction fits the facts of a particular case and what modifications, if any, may be needed. For example, a paralegal assisting with the preparation of proposed jury instructions might compare the elements identified in a proof chart to the applicable Wisconsin Civil Jury Instructions, flag instructions that appear relevant to the claims and defenses in the case, and note any bracketed language or comments suggesting that modifications may be necessary based on the facts of the case.

The proof chart and special verdict can also assist the trial team in selecting appropriate jury instructions. Because the proof chart organizes evidence according to the elements of the parties' claims and defenses, it serves as a useful checklist for identifying the legal concepts that must be explained to the jury. By comparing the proof chart to the proposed special verdict, attorneys and paralegals can determine which instructions are necessary to help the jury evaluate the evidence and answer the verdict questions correctly. Both of these documents help ensure that the proposed instructions address all necessary legal issues, correspond to the evidence that will be presented at trial, and avoid including instructions that are irrelevant to the disputed facts or legal theories in the case.

Paralegals frequently assist attorneys by locating relevant Wisconsin Civil Jury Instructions, comparing pattern instructions to the facts of the case, identifying instructions that may require modification, and organizing proposed instructions for submission to

the court. They may also help verify that the proposed instructions are consistent with the claims, defenses, and verdict questions that will be presented to the jury.

Applying Jury Instruction Analysis: The Mendoza Case

Assume the Mendoza case proceeds to trial on claims of negligence and contributory/comparative negligence. Because the jury will be required to determine whether Takahashi and Mendoza acted with ordinary care and whether either party's conduct caused the collision, the parties will likely request instructions addressing negligence, ordinary care, causation, comparative negligence, and damages. The specific instructions selected should correspond to the factual issues the jury will be asked to resolve in the special verdict.

One useful approach is to review the proposed jury instructions alongside the special-verdict questions. For example, if the jury must determine whether Takahashi was negligent, it will need instructions explaining the concepts of negligence and ordinary care. If the jury must apportion responsibility between the parties, it will require instructions addressing contributory or comparative negligence and the allocation of causal negligence. The evidence may also support more specialized instructions relating to the operation of motor vehicles or the duties of roadway users. For example, depending on the facts developed at trial, an instruction such as Wis. JI-Civil 1030, Right to Assume Due Care by Highway Users (1992), may be appropriate. Likewise, if damages are disputed, the jury should receive instructions explaining the categories of compensable damages (for example, personal injuries or property) and the standards governing any award. By comparing the proposed instructions to the verdict questions, the trial team can ensure that jurors receive the legal guidance necessary to decide each issue submitted for their consideration.

Practice Tip: Paralegal Checklist for Proposed Jury Instructions

The goal is not simply to collect jury instructions. The goal is to provide the jury with clear and accurate legal guidance that supports the special-verdict questions and reflects the evidence that will be presented at trial.

Before proposed jury instructions are submitted to the court, confirm that:

- ☐ The claims, defenses, and affirmative defenses have been identified.
- ☐ Applicable Wisconsin Civil Jury Instructions have been located.
- ☐ Each proposed instruction relates to an issue supported by the evidence.
- ☐ The instructions are consistent with the attorney's theory of the case.
- ☐ The instructions correspond to the proposed special-verdict questions.
- ☐ Bracketed language has been reviewed and completed as appropriate.
- ☐ Comments, notes, and special-use provisions have been reviewed.
- ☐ Proposed modifications have been approved by the attorney.
- ☐ Additional instructions have been drafted for issues not adequately addressed by a pattern instruction.
- ☐ Citations and references to Wisconsin Civil Jury Instructions are accurate.
- ☐ The instructions are organized in the format required by the court.
- ☐ Copies are available for the court, opposing counsel, and the attorney.

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9.5: The Paralegal's Role in Preparing for the Pretrial Conference

The pretrial conference is one of the final opportunities for the parties to identify and resolve issues before trial begins. Consequently, much of the work performed by paralegals in the weeks preceding the pretrial conference is directed toward ensuring that the attorney has the information and documents necessary to discuss the case effectively with the court and opposing counsel.

Although attorneys are responsible for making strategic decisions and advocating on behalf of their clients, paralegals frequently assist by organizing information, reviewing deadlines, preparing documents, and coordinating the many administrative details that accompany pretrial preparation. By ensuring that witness lists, exhibit lists, stipulations, proposed special verdicts, proposed jury instructions, and other materials are accurate and complete, paralegals help the attorney focus on the legal and strategic issues likely to arise during the conference.

One of a paralegal's primary responsibilities is reviewing the court's scheduling order, pretrial order(s), and any applicable local rules to identify filing deadlines and submission requirements. Different courts may require the parties to exchange or submit witness lists, exhibit lists, jury instructions, verdict forms, stipulations, motions, or pretrial reports before the conference. Failure to comply with these requirements may result in sanctions, exclusion of evidence, or unnecessary delays.

Paralegals also assist with gathering and organizing information that will be discussed during the conference. This may include updating witness and exhibit lists, identifying potential stipulations, preparing summaries of unresolved evidentiary issues, reviewing proof charts, and confirming that proposed jury instructions and special verdict forms accurately reflect the claims and defenses that remain in dispute. Because trial preparation is often ongoing, paralegals should verify that all documents reflect the most current information available.

In addition to preparing documents, paralegals frequently help organize the materials the attorney will use during the conference. These materials may include key pleadings, important motions and orders, discovery summaries, deposition summaries, proof charts, witness and exhibit lists, proposed jury instructions, proposed special verdict forms, and other documents relevant to issues expected to arise during the conference. A well-organized pretrial conference file allows the attorney to quickly locate information and respond effectively to questions from the court.

Paralegals should also be prepared to assist with follow-up tasks after the conference. Once the court issues its pretrial order, the paralegal may be responsible for updating trial-preparation materials, revising witness or exhibit lists, calendaring new deadlines, coordinating compliance with court directives, and ensuring that any agreements or rulings reached during the conference are reflected in the trial team's preparation.

Ultimately, the paralegal's role is to ensure that the attorney has accurate, organized, and readily accessible information for use during the pretrial conference. Careful preparation can streamline discussions with the court, reduce last-minute problems, and help position the case for an efficient and effective trial.

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9.6: Key Takeaways

The Purpose and Scope of the Pretrial Conference

- Successful pretrial conference preparation begins after discovery has been completed and the parties have identified the evidence, witnesses, claims, defenses, and legal issues that will shape the trial. The pretrial conference provides an opportunity to narrow disputed issues, address procedural and evidentiary concerns, explore settlement possibilities, and ensure that the case is ready for presentation.

Preparing Materials for the Pretrial Conference

- Witness lists and exhibit lists are important trial-management tools that help the court, opposing counsel, and the parties understand the testimony and evidence that may be presented at trial. Accurate and up-to-date lists promote efficient trial preparation and reduce the likelihood of scheduling or evidentiary problems.
- Stipulations can streamline the trial process by eliminating the need to prove facts, authenticate documents, or present evidence regarding matters that are not genuinely disputed. Effective use of stipulations allows the parties and the court to focus on the issues that remain contested.

Wisconsin Special Verdicts

- Wisconsin courts commonly utilize special verdicts, which require jurors to answer specific factual questions rather than simply determine which party prevails. Special verdict questions should correspond to the elements of the parties' claims and defenses and be supported by the evidence presented at trial.
- Proof charts can be valuable tools for drafting special verdict forms because they help identify disputed elements, supporting evidence, affirmative defenses, and the factual issues that must be resolved by the jury. Reviewing the proof chart helps ensure that each verdict question relates to an issue that is actually in dispute.

Wisconsin Jury Instructions

- Jury instructions provide the legal framework the jury must use when evaluating the evidence and answering the special-verdict questions. The jury instructions and special verdict should be reviewed together to ensure that the jury receives appropriate guidance on every issue it must decide.
- The Wisconsin Civil Jury Instructions serve as an important starting point when drafting proposed jury instructions. Although pattern instructions often address litigated issues commonly, attorneys may need to modify existing instructions or draft additional instructions to address unique claims, defenses, or factual circumstances.

The Paralegal’s Role in Preparing for the Pretrial Conference

- Paralegals play an important role in pretrial conference preparation by reviewing scheduling orders, organizing witness and exhibit information, identifying potential stipulations, drafting proposed verdict forms and jury instructions, and assembling materials the attorney will need during the conference.
- Careful preparation before the pretrial conference can simplify issues, improve efficiency, reduce surprises at trial, and help ensure that the attorney is prepared to address unresolved legal, evidentiary, and procedural matters.
- The documents prepared for the pretrial conference often form the foundation for the trial itself. By helping organize and prepare those materials, paralegals make a significant contribution to the effective presentation and management of the case at trial.

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9.7: Summary

The pretrial conference represents an important transition between trial preparation and trial presentation. At this stage, the parties have completed discovery, evaluated the evidence, and developed their legal theories. The focus now shifts to refining the issues that will be presented at trial, resolving matters that can be addressed in advance, and ensuring that the court and the parties are prepared to proceed efficiently.

The documents prepared in anticipation of the pretrial conference help define the scope of the upcoming trial. Witness lists, exhibit lists, and stipulations identify the evidence that will be presented and the matters that no longer require proof. By narrowing disputed issues and clarifying the parties' positions, these materials promote efficient case management and reduce unnecessary complications during trial.

Two of the most significant pretrial documents in Wisconsin practice are the proposed special verdict and proposed jury instructions. Together, they help structure the jury's decision-making process by identifying the questions the jury must answer and the legal standards that govern those answers. Careful review of the claims, defenses, evidence, and proof charts enables the trial team to develop verdict forms and jury instructions that accurately reflect the issues to be decided.

Although drafting verdict forms and jury instructions is ultimately the attorney's responsibility, paralegals frequently provide substantial support throughout the process. Their familiarity with the evidence, witness testimony, and procedural requirements allows them to assist with organizing information, identifying relevant authorities, and ensuring consistency among the various trial-preparation documents.

Effective pretrial conference preparation requires careful planning, organization, and attention to detail. By helping attorneys prepare and manage the documents that shape the trial, paralegals contribute to a more efficient litigation process and help ensure that the case is presented clearly and effectively when trial begins.

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Terms with Definitions

Exhibit List: A document identifying the exhibits a party may offer into evidence at trial.

General Verdict: A verdict in which the jury determines which party prevails without making specific factual findings.

Jury Instruction: A direction given by the court explaining the legal principles the jury must apply when deliberating.

Pattern Jury Instruction: A model jury instruction developed to explain a particular legal principle and serve as a starting point for attorneys and courts.

Pretrial Conference: A court proceeding conducted before trial to address issues affecting the management, presentation, and resolution of the case.

Pretrial Order: An order issued following a pretrial conference that governs the subsequent course of the litigation unless modified by the court.

Special Verdict: A verdict form requiring the jury to answer specific factual questions rather than simply deciding which party wins the case.

Stipulation: An agreement between the parties concerning a fact, document, issue, or procedural matter.

Scheduling Order: A court order establishing deadlines and requirements for various stages of litigation and trial preparation.

Witness List: A document identifying the individuals a party may call to testify at trial.

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9.9: References

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10: SUPPORTING THE ATTORNEY DURING TRIAL

10.0: Introduction

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10.0: Introduction

Competency: Organize and manage trial materials and litigation support activities to assist attorneys during civil trial proceedings.

Learning Objectives

- Explain the purpose of a trial notebook.
- Compile, organize, and maintain a trial notebook for use at trial.
- Assist attorneys during voir dire by organizing and tracking juror information.
- Manage witness and exhibit information during trial.
- Organize and maintain a trial war room.
- Update trial-support materials in response to developments during trial.
- Describe the paralegal's role in providing ethical and effective trial support.

Fact Scenario – Mendoza Case

On May 29 of last year, a collision occurred at the intersection of Twin Harbor Drive and Fox Hollow Boulevard in Minocqua, Wisconsin. Both roadways are four-lane, divided streets with a flat median, and each approach to the intersection includes designated left-turn lanes. The intersection is regulated by traffic signals, which provide both green and yellow left-turn arrows.

At the time of the incident, Ari Mendoza was operating a Mazda Miata and was attempting to turn left from eastbound Twin Harbor Drive onto northbound Fox Hollow Boulevard. Jordan Takahashi was driving a Ford Expedition in the far-right lane of westbound Twin Harbor Drive. Immediately prior to the collision, both drivers had been stopped at the red signal governing their respective directions of travel. The collision occurred when both vehicles entered the intersection, resulting in Takahashi's vehicle striking the front passenger door of Mendoza's vehicle. Riley Barrett, the passenger in Mendoza's vehicle, sustained severe injuries. Mendoza was also injured, though to a lesser extent, while Takahashi was uninjured. At the scene, both Mendoza and Takahashi informed investigating officers that they each had a green signal at the time they entered the intersection.

According to the police report, Quinn Harrison witnessed the accident and submitted a statement to the investigating officer. Harrison was also stopped at the red light in the far right lane traveling westbound on Twin Harbor Drive. Harrison was stopped "a couple of cars" behind Takahashi and claimed to have seen and heard the collision. Harrison insisted to the investigating officer that the traffic signal for westbound traffic on Twin Harbor Drive was red at the time of the collision.

A deposition of Harrison revealed that Harrison was stopped behind a brown UPS delivery truck, and an orange semi tractor-trailer was stopped in the left lane next to and just ahead of where Harrison's vehicle was stopped. When pressed during the deposition, Harrison stated, "Actually, I guess I didn't really see the traffic light, and I didn't see the accident happen either. But I sure heard it! And I'm positive our light was red." When asked, "If you didn't see the light, how can you be certain it was red?" Harrison replied, "Well, we hadn't started moving yet!

Martyn Penwald, the driver of the orange semi tractor-trailer, witnessed the accident while waiting for the traffic signal to turn green. Penwald's deposition testimony described Mendoza slowly turning left onto Fox Hollow Boulevard while the light for westbound Twin Harbor Drive traffic was still red. According to Penwald, as soon as the light for westbound Twin Harbor Drive turned green, Takahashi "gunned it" into the intersection at a high rate of speed, striking Mendoza's vehicle.

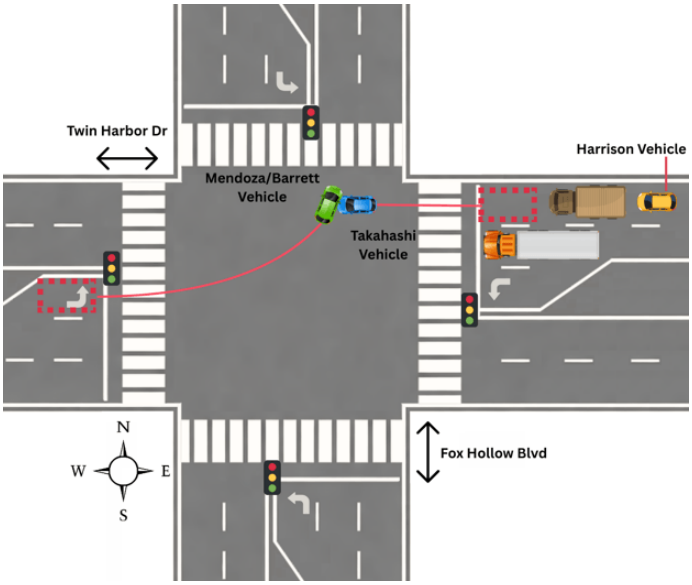

Figure 10.0.1: Mendoza Accident Diagram. (WisTech Open. 2026. CC BY-SA 4.0.)

The trial is the culmination of months, and sometimes years, of preparation involving investigation, discovery, pleadings, motions, and numerous organizational and case-management documents. By the time trial begins, opening night has arrived. The script has been finalized, the cast is in place, and the audience has taken its seats. The focus now shifts from preparation to performance.

Just as a successful production depends on stage managers, crew members, props, schedules, and backstage coordination, a successful trial depends on careful organization and efficient support systems. Attorneys must be able to locate information quickly, present evidence effectively, respond to unexpected developments, and keep the trial moving forward. Trial notebooks, juror information, witness and exhibit management systems, and war-room resources help transform large amounts of case information into tools that can be used efficiently in the courtroom.

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10.1: The Purpose of the Trial Notebook

Imagine trying a complex civil case using only the case file. Each time information was needed, the attorney would have to search through pleadings, discovery responses, deposition transcripts, exhibits, motions, correspondence, and other case materials. In a courtroom where attorneys are expected to respond quickly to witness testimony, evidentiary objections, and questions from the court, such delays can interrupt the presentation of evidence and distract from the client's case. Even when the evidence strongly favors one side, poor organization can diminish the effectiveness of an otherwise well-prepared presentation. When the outcome is close, an attorney's ability to present information clearly, efficiently, and confidently may influence how the factfinder perceives the case.

A trial notebook is designed to prevent those problems. It is a working trial resource that consolidates the most important case materials into a single, organized location, allowing the attorney to quickly access the information needed during trial. Rather than replacing the complete case file, the trial notebook distills months or years of litigation into a practical tool that supports witness examinations, evidentiary presentations, motion arguments, and other courtroom activities.

A well-organized trial notebook promotes efficiency and supports effective decision-making. Whether locating a deposition excerpt for impeachment, reviewing a witness summary, confirming an evidentiary ruling, or checking the wording of a jury instruction, the attorney should be able to find critical information within seconds. By reducing the time spent searching for documents and increasing the attorney's ability to respond quickly and accurately, the trial notebook helps keep the focus where it belongs: on presenting the client's case.

The trial notebook serves a function similar to a property master's inventory system. In a theatrical production, the property master is responsible for knowing what props are needed, where they are located, when they will be used, and how quickly they can be delivered to the performers. Likewise, the trial notebook helps the legal team track the information, exhibits, witnesses, and supporting materials needed throughout the trial. When an attorney suddenly needs a deposition excerpt for impeachment, a photograph referenced by a witness, a jury instruction, or a copy of a court order, the trial notebook allows those materials to be located quickly and efficiently. In many respects, the notebook serves as both an inventory and a retrieval system for the tools required to present the case.

Paralegals typically play a primary role in assembling, maintaining, and updating the trial notebook. They help determine what materials should be included, organize those materials in a logical manner, and ensure that information remains current as the case develops. Trial notebooks may be maintained in paper format, electronic format, or a combination of both, but regardless of the format used, the purpose remains the same: to organize essential trial information so it can be accessed efficiently when needed.

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10.2: Trial Notebook Contents

The contents of a trial notebook will vary depending on the nature of the case, the preferences of the attorney, and whether the notebook is maintained in paper or electronic form. The trial notebook contains many of the materials needed to keep the production running smoothly. Just as a production book contains schedules, cast information, scripts, prop inventories, and production notes, the trial notebook brings together the information attorneys and paralegals are most likely to need as the trial unfolds. Regardless of format, an effective trial notebook should contain the information the attorney is most likely to need during trial and organize that information in a manner that allows it to be located quickly. Although there is no universally accepted trial notebook format, most trial notebooks contain several common categories of materials.

Case Management Materials

The case management materials section of a trial notebook serves as the attorney's primary quick-reference section during trial. Because these materials are consulted frequently, they are typically placed at the beginning of the notebook where they can be located immediately. In addition to a table of contents and index, the front matter should contain several substantive documents that help orient the attorney to the case and support efficient trial management. Common front-matter materials include the theory of the case, trial themes, case chronology, and proof chart.

One of the most important components of this section is the theory of the case. As you will recall from previous chapters, the theory of the case summarizes the client's position, identifies the key disputed issues, and explains why the evidence supports the desired outcome. Many attorneys also include a brief statement of their trial theme or themes, which can serve as a reminder of the central message they want the factfinder to take away from the evidence. A case chronology and proof chart are particularly valuable components of the trial notebook because they help the attorney maintain focus on both the factual narrative and the legal issues in the case. The chronology provides a concise timeline of significant events, allowing the attorney to quickly place testimony and exhibits in context. The proof chart organizes evidence according to the elements of the claims and defenses, helping the attorney monitor whether sufficient evidence has been introduced to support each required element. When the pace of trial becomes hectic, these materials help the attorney stay focused on the overall narrative of the case rather than becoming distracted by individual pieces of testimony or evidence.

Other common case management materials include:

- Cast of Characters, with names and contact information for parties, attorneys, and the judge
- Witness List, including contact information and their role in the case
- Trial schedule
- Witness schedule

Case management materials help the trial team stay organized and quickly access critical information during trial. These materials provide an overview of the parties, witnesses, facts, legal issues, and trial schedule, allowing attorneys to locate important information within seconds when it is needed. These are the materials the attorney turns to first when trying to orient themselves to the case during trial.

Pleadings and Key Filings

The trial notebook should also contain the pleadings and court filings that define the issues being litigated. These materials provide a quick reference to the claims, defenses, and rulings that shape the trial. Typical documents include the complaint, answer, counterclaims, crossclaims, or third-party claims, as well as significant motions and related court orders. The notebook should also include motions *in limine*, rulings affecting the admissibility of evidence, and the final pretrial order. While the complete pleadings file will typically remain available elsewhere, including these key documents in the trial notebook allows the attorney to quickly reference issues that arise during trial.

Jury Selection and Voir Dire

Jury selection is the first phase of a jury trial and provides attorneys with an opportunity to obtain information that may affect a

prospective juror's ability to decide the case fairly. During voir dire (a French term that means “to speak the truth”), the parties and the court question prospective jurors to determine whether they can serve as fair and impartial jurors in the case. Because voir dire often moves quickly, many attorneys include a dedicated jury-selection section in the trial notebook. This section commonly contains the proposed juror list, juror qualification forms or questionnaires, proposed voir dire questions, and a jury seating chart.

Juror lists and questionnaires provide background information about prospective jurors and can help identify areas for follow-up questioning. Juror lists are typically provided by the court before jury selection and identify the individuals summoned for jury service in the case. Depending on the court's procedures, the list may include juror numbers, names, occupations, or other identifying information. In many courts, prospective jurors are also asked to complete juror qualification forms or questionnaires before voir dire begins. These questionnaires are generally prepared or approved by the court and may contain information regarding a juror's background, occupation, education, prior jury service, litigation experience, family relationships, or other matters that may be relevant to jury selection. Attorneys often review this information before voir dire to identify areas for follow-up questioning.

Proposed voir dire questions help ensure that important topics are addressed during jury selection. Attorneys may prepare questions designed to uncover potential bias, identify relevant experiences, or explore attitudes that could affect a juror's ability to evaluate the evidence fairly.

The jury seating chart is often one of the most valuable voir dire tools. As prospective jurors answer questions, attorneys and paralegals can record information directly on the chart, making it easier to identify jurors, track responses, and evaluate potential challenges and strikes. Information gathered during voir dire may be used to support a challenge for cause or to guide the attorney's use of peremptory strikes. Juror questionnaires, voir dire notes, and seating charts help attorneys evaluate prospective jurors and make informed decisions regarding jury selection.

Opening Statement Materials

Many attorneys include a separate opening-statement section in the trial notebook because opening statements introduce the facts, themes, and issues that will shape the jury's understanding of the case. This section typically contains an opening-statement outline, along with any exhibits or demonstrative aids the attorney plans to reference during the opening.

Common materials include key documents, photographs, timelines, maps, diagrams, or other visual aids that help explain the case and provide context for the evidence that will be presented at trial. Keeping these materials together allows the attorney to quickly locate and use them during the opening statement and helps ensure that the presentation remains organized and consistent with the overall theory of the case.

Discovery Materials

Many discovery materials remain valuable throughout the proceedings and should be included in the trial notebook. Discovery often contains witness statements, admissions, deposition testimony, and other information that may be needed for witness examination, impeachment, rebuttal, or evidentiary arguments. Having these materials readily available allows the attorney to respond quickly when issues arise during trial.

The amount of discovery included in the trial notebook will vary depending on the complexity of the case and the attorney's preferences. Rather than including complete discovery files, most attorneys prefer a curated collection of the discovery materials most likely to be used at trial. These materials should be organized so that the attorney can quickly locate relevant information without searching through hundreds or thousands of pages of documents.

Discovery materials commonly included in a trial notebook include deposition summaries, key deposition excerpts, witness statements, interrogatory answers, requests for admission and responses, important requests for production and produced documents, and discovery response summaries. Materials that contain admissions, factual concessions, inconsistent statements, or information supporting impeachment and rebuttal are particularly useful.

The discovery section should also contain references to the location of complete discovery materials that are maintained elsewhere. If a witness unexpectedly changes testimony or a dispute arises concerning a prior statement, the attorney may need access to the full deposition transcript or discovery response. Clear organization and cross-referencing can help the trial team access this information quickly.

Witness Materials

Witness materials help the attorney prepare for and conduct witness examinations and are often the largest section of the trial notebook. Many attorneys organize this section according to the anticipated order of witness appearances at trial so that information can be located quickly as the trial progresses.

A separate subsection is commonly maintained for each witness. These materials typically include the witness's contact information, a witness summary describing the anticipated testimony, deposition excerpts, witness statements or affidavits, direct- and cross-examination outlines, related exhibits, and other information the attorney may need during examination. Because witness examinations often influence trial strategy and may develop in unexpected ways, these materials should be organized for quick access and easy updating.

Because discovery materials are frequently used during witness examinations, some attorneys include all important discovery relating to each witness in this section, including deposition testimony, interrogatory responses, admissions, witness statements, and relevant documents. Organizing information by witness allows the attorney to prepare for examinations efficiently and quickly locate prior testimony, admissions, or documents needed during direct or cross-examination.

Exhibit Materials

Exhibits are frequently among the most heavily used materials during trial. For that reason, the exhibit section of the trial notebook should be organized so that the attorney can quickly locate exhibits and determine their status at any point during the proceedings. Depending on the attorney's preferences, exhibits may be organized by witness, by issue, or by the order in which they are expected to be introduced at trial.

The exhibit section typically begins with the exhibit list, which serves as an index to the exhibits the parties anticipate offering into evidence. Supporting materials may include copies or summaries of important exhibits, exhibits organized by witness or issue, and notes regarding how particular exhibits relate to the claims, defenses, or testimony expected at trial. To facilitate admission of exhibits, many attorneys also include authentication and foundation notes identifying the witness, certification, or other evidence needed to establish admissibility. Copies of stipulations concerning exhibits may also be maintained in this section so the attorney can quickly determine whether authenticity, foundation, or admissibility issues have already been resolved.

Because evidentiary rulings often occur throughout trial, exhibit sections frequently contain admitted/excluded exhibit tracking forms. These forms allow the trial team to monitor whether exhibits have been offered, admitted, excluded, withdrawn, or reserved for later ruling. Maintaining accurate exhibit-status information can prevent confusion and help ensure that attorneys use only those exhibits that have been admitted or are otherwise available for use.

Example 10.2.1

Case Name:

Table 10.2.1: Example Trial Exhibit Tracking Sheet

Exhibit #	Description	Offered by	Admitted	Excluded	Withdrawn	Objection(s)	Court's Ruling

In larger cases, attorneys often maintain separate exhibit binders in addition to the trial notebook. In those situations, the notebook may contain exhibit lists, summaries, tracking forms, and references directing the attorney to the location of the complete exhibit set. Regardless of the format used, the objective remains the same: to provide the attorney with immediate access to the exhibits and exhibit-related information necessary to present the case efficiently and effectively.

Rebuttal and Impeachment Materials

As discussed in previous chapters, effective trial preparation requires anticipating credibility challenges and opposing evidence. For that reason, many attorneys maintain a separate section devoted to impeachment and rebuttal materials that may be needed unexpectedly during trial.

Some attorneys incorporate impeachment materials directly into the witness sections of the trial notebook. Others prefer to maintain a separate collection of critical deposition excerpts, prior inconsistent statements, contradictory documents, and related materials that may be used to challenge witness credibility. Regardless of the organizational method used, the objective is the same: to ensure that potentially important impeachment evidence can be located immediately when needed.

For example, in the Mendoza case, Harrison's deposition testimony could be used to challenge earlier statements regarding the traffic signal and the collision. Similarly, materials relating to Penwald's observations might be organized separately to address anticipated attacks on his ability to observe the events in question. Organizing these materials before trial allows the attorney to respond quickly when credibility issues arise.

This section also commonly contains rebuttal witnesses, rebuttal exhibits, and documents organized around anticipated defenses or disputed issues. Because rebuttal evidence is often prepared as a contingency and may never be used, organizing it separately from witness files helps the attorney quickly identify materials that may be needed to respond to unexpected testimony or arguments presented by the opposing party.

Whether organized by witness, issue, or defense, impeachment and rebuttal materials should be clearly labeled, cross-referenced, and readily accessible. When a credibility issue or unexpected development arises during trial, the attorney often has only moments to locate and use the necessary information.

Jury Instructions and Verdict Forms

The jury instructions and verdict forms section of the trial notebook contains the proposed and final jury instructions, as well as the proposed and final verdict forms. Blank paper should also be included so the attorney can take notes during the jury-instruction conference, which occurs at the close of evidence and before closing arguments. Wis. Stat. § 805.13(3) (2025).

In Wisconsin civil cases, attorneys often organize jury instructions and special verdict forms together because they are closely related. The jury instructions explain the legal standards that apply to the case, while the verdict form identifies the factual questions the jury must answer. Attorneys frequently use these materials when preparing witness examinations, responding to issues raised by the court, and developing closing arguments.

Closing Argument Materials

Many attorneys include a separate section of closing-argument materials in the trial notebook because closing argument requires the attorney to synthesize the evidence presented during trial and explain why that evidence supports a favorable verdict. Unlike opening statements, which focus on what the evidence is expected to show, closing arguments focus on what the evidence actually proved.

This section typically contains the attorney's closing-argument outline, important demonstrative exhibits, damages calculations, significant quotations from witness testimony, and references to key exhibits admitted during trial. Attorneys often organize these materials around the claims, defenses, jury instructions, and verdict questions that will ultimately guide the jury's deliberations.

Because closing arguments are closely tied to the jury instructions and verdict form, many attorneys include references to specific jury instructions and verdict questions throughout their closing materials. For example, an attorney may organize the closing argument by walking the jury through each verdict question and identifying the testimony, exhibits, and legal standards that support a particular answer. Keeping these materials together helps ensure that the argument remains focused and consistent with the issues the jury must decide.

Legal Research

Many attorneys include a legal research section in the trial notebook to provide quick access to the authorities most likely to be

cited or relied upon during trial. Although extensive legal research files are typically maintained elsewhere, this section contains the key authorities needed to address evidentiary objections, procedural issues, motions, jury-instruction disputes, and other legal questions that may arise in the courtroom.

The contents of this section vary depending on the nature of the case, but commonly include copies or summaries of important cases, relevant statutes, frequently referenced authorities, and any trial briefs filed by the parties. Attorneys often annotate these materials or include notes identifying particularly important passages, holdings, or statutory provisions so they can be located quickly during trial.

Depending on the subject matter of the case, attorneys may also maintain additional research sections devoted to specialized topics. For example, a personal injury case may include a medical research section containing information regarding injuries, treatment, or terminology. A product liability or construction case may include technical research materials, engineering standards, or industry publications. Other cases may require scientific, financial, accounting, or regulatory reference materials. Organizing these resources in advance allows the trial team to quickly locate specialized information when it becomes relevant during testimony or argument.

Trial Notes

Unlike many other sections of the trial notebook, which consist primarily of documents prepared before trial, the trial notes section evolves continuously as the proceedings progress. Attorneys and paralegals use this section to record observations, track developments, and preserve information that may become important later in the trial, including witness testimony, evidentiary rulings, objections, stipulations, scheduling changes, and other significant events. By maintaining a running record of these developments, the trial team can more easily identify emerging issues, adjust trial strategy, and ensure that important information remains readily available throughout the proceedings.

The contents of this section vary depending on the attorney's preferences and the level of paralegal involvement during trial. In some cases, the attorney may maintain personal trial notes, while in others the paralegal may assist by organizing notes, maintaining records of court rulings, updating witness and exhibit information, or incorporating information received from members of the trial team. When maintained, the trial notes section commonly includes summaries of significant testimony, records of evidentiary rulings, notes regarding admitted and excluded exhibits, witness scheduling information, issues for follow-up investigation, and reminders concerning matters that should be addressed later in the trial. These materials can also help the attorney prepare for witness examinations, closing arguments, post-trial motions, and potential appeals.

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10.3: Organizing Trial Notebook Contents

A trial notebook is only as useful as its organization. Even the most comprehensive notebook will have limited value if the attorney cannot quickly locate needed information during witness examinations, evidentiary disputes, jury-instruction conferences, or other critical moments in the trial. The goal is not simply to collect important documents, but to arrange them in a manner that allows the trial team to access, use, and update information efficiently as the trial progresses. Ultimately, the most effective trial notebook is not necessarily the one with the most sections or documents. It is the one that allows the attorney to locate critical information quickly and efficiently when it matters most.

Organizing by Function

Trial notebooks are traditionally maintained in one or more three-ring binders divided into clearly labeled sections. This approach places the most frequently used materials in a single, organized location and helps reduce the likelihood that documents will become lost or scattered across the counsel table. Tabs, indexes, color coding, and consistent section organization can further improve efficiency by allowing attorneys to quickly locate information under pressure.

Some attorneys prefer a folder-based approach rather than a traditional binder system. Under this method, materials are organized into separate folders that may be arranged by witness, exhibit, issue, motion, or phase of the trial. One advantage of the folder system is that only the materials relevant to a particular witness or stage of the proceedings need to be kept readily accessible. Once a witness has testified or an issue has been addressed, those materials can be set aside and replaced with the documents needed for the next phase of the trial, reducing clutter and minimizing confusion.

Regardless of the format used, materials should be organized logically and consistently. Related documents should be grouped together, labels should be clear and descriptive, and sections should be arranged in a manner that reflects how the attorney expects to use the information during trial. The organizational system should be intuitive enough so that another member of the trial team could quickly locate needed materials if necessary.

Electronic Trial Notebooks

Many modern trial teams rely on electronic trial notebooks rather than, or in addition to, traditional paper notebooks. Advances in case-management software, litigation-support databases, scanners, tablets, and laptop computers have transformed the way attorneys organize and access information during trial. Rather than carrying multiple binders to the courthouse, attorneys may maintain large portions of the trial notebook electronically.

An electronic trial notebook typically mirrors the structure of a traditional notebook. Separate folders or directories may be created for pleadings, motions, witness materials, exhibits, jury materials, research, and other trial resources. Documents can be organized, indexed, searched, and cross-referenced electronically, often making information easier to locate than in a paper notebook. In many cases, the attorney can bring not only the trial notebook to court, but the entire case file in electronic form.

Electronic notebooks also offer additional advantages. Hyperlinks can connect related materials, searchable databases can quickly locate testimony or exhibits, and digital copies can be shared among members of the trial team. As a result, electronic notebooks often provide greater flexibility and easier access to information than traditional paper systems.

Backup and Redundancy

Despite the advantages of electronic notebooks, technology is not infallible. Computers fail, batteries lose power, files become corrupted, and internet access may be unavailable. For that reason, trial teams should always maintain backup systems. Backups may include duplicate electronic copies stored on external drives or cloud-based systems, paper copies of critical materials, or a combination of both. Key witness materials, important exhibits, jury instructions, verdict forms, and other essential documents should remain accessible even if the primary electronic system becomes unavailable. Effective trial preparation assumes that problems may occur and develops contingency plans before they happen.

The Paralegal's Role in Organizing the Trial Notebook

Paralegals frequently take the lead in organizing and maintaining trial notebooks, pursuant to the supervising attorney's preferences and instructions. Because they are often familiar with every stage of the litigation process, paralegals are well positioned to determine what materials should be included, how those materials should be organized, and how updates should be incorporated as trial approaches.

As evidence, witness information, court orders, and trial strategies evolve, paralegals help ensure that the notebook remains current and accurate. They may update indexes, add new documents, revise witness sections, maintain backups, and verify that both paper and electronic materials can be located quickly when needed.

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10.4: Assisting the Attorney During Voir Dire

The cast has been assembled, the props have been gathered, organized, and inventoried, and the stage is set for opening night. The attorney is prepared to present the case, witnesses are ready to testify, exhibits have been organized, and the trial notebook is in place. Before the presentation can begin, however, one critical task remains: selecting the audience that will ultimately determine the outcome of the case.

In a jury trial, that audience is the jury. During voir dire, the court and the attorneys question prospective jurors to determine whether they can serve as fair and impartial decision makers. The information obtained during jury selection helps the parties identify potential bias, evaluate jurors' backgrounds and experiences, and determine whether individual jurors should be excused from service. Because jury selection often establishes the first impression of the case and shapes the group that will hear the evidence, it is one of the most important stages of the trial process.

Although attorneys conduct the questioning and make strategic decisions regarding jurors, paralegals frequently provide significant support before and during voir dire. By organizing juror information, maintaining jury charts, tracking responses, and recording observations, paralegals help attorneys evaluate prospective jurors efficiently and make informed decisions throughout the jury-selection process.

Jury Selection Documents

During voir dire, the court and attorneys question prospective jurors to determine whether they can serve as fair and impartial jurors. Information gathered during the process may assist attorneys in evaluating challenges for cause and peremptory challenges. Because jury selection often moves quickly, attorneys rely heavily on juror questionnaires, seating charts, and other organizational tools to track juror information and support decision-making. Paralegals assist by reviewing and organizing juror information, researching potential jurors, and preparing jury-selection materials.

Preparation for voir dire begins before the prospective jurors enter the courtroom. The amount of information available about prospective jurors varies by court. Some courts provide only a juror list containing basic identifying information, while others require prospective jurors to complete qualification forms or questionnaires before jury selection begins. In many cases, the court prepares or approves these questionnaires and makes them available to the parties in advance.

One of the most useful tools during voir dire is the jury chart (sometimes called a jury matrix, jury map, or juror tracking form). A jury chart is a visual diagram of the jury box showing the location of each prospective juror. As jurors answer questions, attorneys and paralegals can record information directly on the chart, including juror numbers, occupations, education, prior jury service, litigation experience, relevant life experiences, responses to specific questions, and potential grounds for challenges. Because the chart mirrors the physical arrangement of jurors in the courtroom, it allows the trial team to quickly identify jurors and organize observations during the questioning process.

Additional Jury Selection Support

Where permitted by applicable court rules and ethical requirements, paralegals may also assist attorneys with limited juror research. This research generally consists of reviewing publicly available information, such as public records or publicly accessible social-media content, to identify information that may be relevant to jury selection. However, juror research must remain passive. Paralegals should never attempt to communicate with prospective jurors, send friend or connection requests, access private accounts, or engage in any conduct that could be viewed as an improper contact with a juror or prospective juror. Wisconsin courts, like courts in many jurisdictions, place a high value on maintaining the impartiality of the jury and preventing outside influences on prospective jurors. Accordingly, paralegals should always follow the supervising attorney's instructions and ensure that any juror research complies with applicable ethical rules, court orders, and local practice requirements.[1]

Depending on the attorney's preferences and the nature of the case, paralegals may assist with jury selection while it is taking place. During voir dire, they may record juror responses, update jury charts, and maintain notes regarding prospective jurors' backgrounds, experiences, and attitudes. In reviewing questionnaires and responses, paralegals may also identify issues that warrant additional inquiry. For example, a juror's prior involvement in litigation or personal experience related to the facts of the case may suggest a topic the attorney should explore further during questioning.

Once jury selection has concluded, juror information should continue to be maintained and updated throughout the trial. Jury charts, voir dire notes, and juror questionnaires may prove useful when attorneys are evaluating how particular evidence or testimony may be perceived by the seated jury. Because juror information is often sensitive, paralegals must take appropriate steps to maintain confidentiality and protect juror privacy. Proper organization and secure handling of jury materials help ensure that information remains available to the trial team while minimizing the risk of disclosure to unauthorized individuals.

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1. American Bar Association, "The Dos and Don'ts of Using Social Media in Jury Selection." [www.americanbar.org]

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10.5: Assisting With Managing Witnesses and Exhibits During Trial

Once trial begins, witness and exhibit management become ongoing responsibilities. Witness schedules may change unexpectedly, evidentiary rulings may affect the order of proof, and new developments may require rapid adjustments to previously planned presentations. Paralegals often play a critical role in helping attorneys manage these changes while keeping the trial organized and moving efficiently.

Witness Management

Paralegals frequently coordinate witness appearances throughout the trial. This may involve confirming witness availability, communicating schedule changes, arranging transportation or accommodations, and ensuring that witnesses know when and where they are expected to appear. Because witness schedules often change as testimony progresses, maintaining regular communication with witnesses is essential.

In addition to scheduling responsibilities, paralegals may manage witness waiting areas and serve as the primary point of contact between the witness and the trial team. By monitoring witness availability and addressing logistical concerns before they become problems, paralegals help ensure that testimony proceeds smoothly and that attorneys have access to witnesses when needed.

Exhibit Management

Exhibits are often introduced, admitted, excluded, withdrawn, or reserved for later ruling throughout the course of a trial. Whether working in the courtroom or from a trial-support location outside the courtroom, paralegals frequently maintain exhibit logs and tracking forms to document the status of each exhibit and ensure that the attorney knows what evidence is available for use.

Exhibit management may also involve coordinating the retrieval of exhibits, updating exhibit notebooks, organizing demonstrative exhibits, and maintaining materials used for electronic presentations. In larger cases, a single exhibit may exist in multiple formats or locations, making careful organization particularly important. Even when not present in the courtroom, paralegals often support the trial team by locating exhibits, updating exhibit-status information, preparing additional copies, organizing new materials generated during trial, and communicating exhibit-related information to the attorney and other members of the trial team. An effective exhibit-management system helps prevent confusion and ensures that exhibits can be located and used efficiently when needed.

Responding to Trial Developments

Trials rarely proceed exactly as planned. Witness testimony may create new issues, evidentiary rulings may alter trial strategy, and unexpected developments may require immediate action. Paralegals frequently respond to these developments by updating witness information, recording evidentiary rulings, revising trial schedules, maintaining current versions of trial materials, and communicating important information to the attorney and other members of the trial team. They may also be asked to perform additional research, locate cases or statutes relevant to issues that arise during trial, retrieve documents from the case file, prepare supplemental exhibits, or deliver other materials needed by the attorney on short notice. Whether working in the courtroom or from a trial-support location outside the courtroom, paralegals help ensure that the attorney has timely access to the information and resources necessary to respond effectively to unexpected developments. By keeping trial materials current and organized, paralegals help the attorney adapt to changing circumstances without losing focus on the presentation of the case.

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10.6: Organizing and Operating the Trial War Room

By the time trial begins, the attorney has stepped onto the stage and the presentation is underway. The cast (witnesses) is ready, the props (exhibits) are in place, and the property master's inventory system (trial notebook) is updated so that the trial team knows where every "prop" is located and how it will be used. While the attorney is performing before the judge and jury, much of the paralegal's work occurs backstage, ensuring that the next witness, exhibit, document, demonstrative aid, or piece of research is ready before it is needed. The trial war room functions as that backstage operations center.

A trial war room is a centralized location where the trial team organizes information, coordinates activities, and manages the resources needed to support the case. Depending on the size and complexity of the litigation, the war room may consist of a dedicated conference room, temporary office space near the courthouse, a virtual collaboration platform, or a combination of physical and electronic resources. Regardless of its form, the war room serves as the central repository for deposition transcripts, discovery materials, exhibits, witness files, legal research, correspondence, and other trial-related information.

The primary purpose of the war room is to provide a location where the trial team can work efficiently and collaboratively while maintaining immediate access to critical information. Attorneys, paralegals, experts, consultants, and support staff may use the war room to review testimony, analyze exhibits, prepare witnesses, discuss strategy, draft motions, conduct research, and respond to issues that arise during trial. Because trial information changes constantly, the war room often becomes the command center for the entire litigation team.

Creating an effective war room begins with selecting an appropriate workspace. Whether located in a law office, hotel conference room, courthouse meeting room, or other temporary location, the space should be large enough to accommodate the trial team and the materials necessary to support the case. A well-organized workspace can improve efficiency and reduce stress, while a poorly designed workspace can create confusion and wasted time. For this reason, paralegals are frequently responsible for assessing the team's needs, securing an appropriate location, and establishing systems for organizing and maintaining trial materials.

When selecting and setting up a war room, the trial team should consider functionality, accessibility, privacy, security, and the practical needs of the people using the space. Reliable electrical power, adequate workspace, printing and copying capabilities, and high-speed internet access are often essential. The trial team should also maintain an adequate inventory of supplies and resources, including file folders, labels, notebooks, printer paper, ink or toner, chargers, extension cords, and frequently referenced rule books. Running out of necessary supplies during trial can create unnecessary delays and distractions.

Effective war-room operations depend on organization. Physical files, exhibits, deposition transcripts, witness materials, legal research, and demonstratives should be arranged in a logical and consistent manner so that any member of the trial team can locate needed information quickly. Electronic materials should be organized using clearly labeled folders, indexing systems, cross-references, and backup procedures. Many trial teams also maintain a separate collection of frequently used documents, sometimes referred to as a "Hot Docs" file, containing materials that are referenced repeatedly throughout the trial.

The war room also serves as a communication and information-management center. As testimony is completed, exhibits are admitted, evidentiary rulings are made, and trial strategy evolves, paralegals frequently update witness files, exhibit logs, impeachment and rebuttal materials, trial notebooks, and daily trial summaries. They may also coordinate witness appearances, communicate with experts and clients, relay information to the courtroom team, and respond to requests for documents, research, exhibits, or other materials.

Ultimately, a well-organized war room allows the trial team to locate information, communicate efficiently, and respond quickly to developments without disrupting the presentation of the case. By maintaining accurate information, facilitating communication, and ensuring that resources are available when needed, paralegals help create the operational support structure that allows the trial team to focus on presenting the case effectively.

Preparing the Space

Creating an effective war room begins with selecting an appropriate workspace. Whether located in a law office, hotel conference room, courthouse meeting room, or other temporary location, the space should be large enough to accommodate the trial team and the materials necessary to support the case. A well-organized workspace can significantly improve efficiency, while a poorly

organized workspace can create confusion, wasted time, and unnecessary stress. For this reason, paralegals are frequently responsible for assessing the team's needs, securing an appropriate location, and establishing systems for organizing and maintaining trial materials.

When selecting and setting up a war room, the trial team should consider both functionality and accessibility. The space should comfortably accommodate the people, files, exhibits, technology, and supplies that will be used throughout the trial. It should also be easily accessible to members of the trial team and located close enough to the courtroom or other work areas to allow materials and information to move efficiently between locations.

Privacy and security are equally important. The trial team may need dedicated spaces for witness preparation sessions, strategy meetings, client consultations, and confidential discussions with experts. Procedures should be established to control access to both physical and electronic materials, including keys, access cards, or security codes for authorized team members. Confidential documents, electronic files, and attorney work product should be protected at all times.

Finally, the war room should support the day-to-day practical needs of the trial team. Reliable electrical power, adequate workspace, printing and copying capabilities, and high-speed internet access are often essential. Depending on the length and complexity of the trial, amenities such as refrigeration, coffee service, and other conveniences may help maintain productivity during long trial days. By addressing these logistical issues in advance, paralegals help create an environment in which the trial team can work efficiently and focus its attention on presenting the case effectively.

Organizing the Space

A war room is only as effective as its organizational system. During trial, attorneys and support personnel often need immediate access to exhibits, witness files, deposition transcripts, legal research, correspondence, and trial notes. Time spent searching for information is time that cannot be spent responding to developments in the courtroom. For that reason, both physical and electronic materials should be organized according to a consistent system that allows information to be located quickly and accurately.

Physical files should be arranged logically and labeled clearly. Many trial teams organize materials by witness, issue, exhibit, or phase of trial. Electronic repositories should mirror the physical filing structure whenever possible. Consistent folder names, indexing systems, and file-naming conventions help reduce confusion and make it easier for team members to locate information regardless of whether they are searching a file cabinet, trial notebook, shared drive, or document-management system.

Cross-referencing is also important. Whenever practical, physical and electronic materials should be linked through indexes, file references, hyperlinks, document numbers, or other organizational tools. Information should also be organized in more than one way whenever possible. For example, exhibits might be indexed both by witness and by issue, while deposition materials might be organized by witness and cross-referenced to key exhibits. Multiple paths to the same information allow the trial team to locate materials efficiently when time is limited.

Many trial teams also maintain a separate collection of frequently used materials, sometimes referred to as a "Hot Docs" file. This file contains documents that are referenced repeatedly throughout the trial, such as key exhibits, witness schedules, important court orders, frequently cited cases, jury instructions, verdict forms, and significant deposition excerpts. Maintaining these materials in a separate location can save considerable time during trial.

Communication and information-sharing systems should be incorporated into the organizational structure of the war room. Email systems, shared drives, litigation-support software, secure messaging applications, and similar tools help ensure that attorneys, paralegals, experts, and support personnel have access to current information and can communicate efficiently as issues arise. The war room often becomes the central location for coordinating witness appearances, communicating with experts and clients, relaying information to the courtroom team, and responding to requests for documents, research, exhibits, or other materials.

Organization is not a one-time task. As testimony is completed, exhibits are admitted, evidentiary rulings are made, additional research is performed, and trial strategy evolves, paralegals frequently update witness files, exhibit logs, impeachment and rebuttal materials, trial notebooks, and daily trial summaries. These ongoing updates help ensure that all members of the trial team are working from the same information and can respond effectively to developments as they occur. Because information often moves rapidly between the courtroom and the war room, maintaining accurate and current materials is one of the paralegal's most important responsibilities during trial.

Finally, effective war-room organization includes maintaining an adequate inventory of supplies and resources. Extra file folders,

labels, notebooks, office supplies, printer paper, ink or toner, rule books, extension cords, chargers, and other frequently used materials should be readily available. Running out of critical supplies during trial can create unnecessary delays and distractions. A well-organized war room not only contains the information needed to support the trial, but also the tools necessary to keep the trial team operating efficiently from beginning to end.

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10.7: Closing Reflection

By the time the trial begins, opening night has arrived. The cast has been selected, the props have been assembled and inventoried, and the courtroom audience is in place. The attorney now steps onto the stage to present the case to the jury. While the attorney's work is highly visible, much of the paralegal's work continues behind the scenes. Like a skilled property master, the paralegal helps ensure that trial resources are available when and where they are needed.

Professional Responsibilities and Ethical Considerations

Throughout the trial, paralegals frequently serve as the organizational center of the trial team. They maintain witness schedules, update trial notebooks, track exhibits, record evidentiary rulings, coordinate communications, and ensure that trial materials remain current and accessible. Attorneys often rely on paralegals to quickly locate information, retrieve documents, update records, and respond to requests that arise during the presentation of evidence.

Because trial proceedings move quickly, attention to detail is critical. A missed schedule change, misplaced exhibit, outdated witness file, or inaccurate note can create unnecessary complications at a time when attorneys must remain focused on examining witnesses, responding to objections, and presenting the client's case.

These responsibilities must always be performed within appropriate ethical boundaries. Throughout the proceedings, paralegals must maintain confidentiality, protect privileged information, comply with court rules, avoid the unauthorized practice of law, and work under attorney supervision. Particular care should be taken when interacting with witnesses, jurors, clients, court personnel, experts, and opposing counsel. Even casual conversations can create ethical concerns if appropriate professional boundaries are not maintained.

Attributes of a Successful Litigation Paralegal

One of the greatest challenges of trial support is managing multiple priorities simultaneously. While testimony is underway, a witness may need to be located, an exhibit retrieved, a legal issue researched, a technology problem resolved, or trial materials updated. Successful paralegals learn to prioritize tasks, adapt quickly to changing circumstances, and remain calm under pressure.

Perhaps more than any other member of the trial team, the paralegal serves as the organizational hub connecting attorneys, witnesses, exhibits, experts, clients, and support personnel. Information constantly moves between the courtroom and the war room, and paralegals help ensure that everyone is working from the most current and accurate information available. Their effectiveness depends not only on legal knowledge, but also on strong organizational skills, attention to detail, communication skills, flexibility, professionalism, and the ability to anticipate needs before they become problems.

Although much of their work may be invisible to the jury, paralegals often play a significant role in the successful presentation of a case. Through preparation, organization, sound judgment, and adaptability, they create an environment in which attorneys can focus on advocacy while the trial team operates efficiently behind the scenes.

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10.8: Closing Reflection- Mendoza Case

The Mendoza case has accompanied us throughout this text, illustrating how a civil lawsuit develops from an initial client interview to a final verdict. The following poem traces that journey and serves as a reminder that every pleading, deposition, exhibit, witness, jury instruction, verdict form, trial notebook, and war-room activity ultimately contributes to a single event: the trial.

The Mendoza Trial

Driver and driver, stopped at the light,
Sleepless now on a courtroom night.
Please rise, says the bailiff, justice in view,
Twin Harbor Drive case, number six-oh-two.

First comes opening, calm but grave,
Counsel speaks for those they save.
"One turned left, one drove straight through—
The light was green… at least for two."

Then comes testimony, sworn and true,
Mazda driver says, "My arrow grew."
Expedition claims the same green glow,
Two truths clash where the signals go.

Exhibits come out—photos, diagrams,
Four lanes wide with turning plans.
Medians flat and arrows timed,
Seconds counted, frames rewind.

Then comes the crash, replayed in words,
Metal thunder the jurors heard.
Passenger door, a devastating hit,
Riley's injuries center every bit.

Doctors testify, charts laid bare,
Pain and loss fill the air.
Mendoza hurt, Takahashi fine,
But impact doesn't measure blame or time.

Then comes argument, sharp and tight,
Who truly had the lawful light?
Signals lie or drivers err—
Reason must untangle blur.

Jury retires, the room goes still,
Justice turning slower than a wheel.
No witness speaks, no counsel pleads—
Only the facts and the law now lead.

And last comes judgment, firm yet fair,
Accountability weighed with care.
The law applied, the facts embraced—

A verdict born of time, facts, and place.

Final Thought

Behind every witness examination, exhibit, motion, verdict form, and jury instruction is a team of legal professionals working to ensure that the facts are presented clearly and fairly. The litigation paralegal's role may often occur behind the scenes, but the skills discussed throughout this text help make the orderly administration of justice possible.

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10.9: Key Takeaways

The Purpose of the Trial Notebook

- Effective trial advocacy depends on more than persuasive arguments and strong evidence. Success at trial also requires careful organization, efficient information management, and the ability to quickly locate and use critical documents, exhibits, and witness information when needed.
- A trial notebook serves as the attorney's primary trial reference tool. By organizing key case materials into a single, accessible resource, the trial notebook helps attorneys respond efficiently to witness testimony, evidentiary issues, and questions from the court.

Trial Notebook Contents and Organization

- The contents of a trial notebook vary from case to case, but typically include case-management materials, pleadings, discovery summaries, jury-selection materials, witness files, exhibit information, impeachment and rebuttal materials, jury instructions, verdict forms, legal research, and trial notes. Effective organization allows the trial team to locate information quickly and maintain focus on presenting the case.
- Discovery materials continue to play an important role during trial. Deposition excerpts, interrogatory responses, admissions, witness statements, and other discovery documents are frequently used during witness examinations, impeachment, rebuttal, and evidentiary arguments.
- Witness materials are often organized by the anticipated order of appearance and contain the information necessary to prepare for direct examination, cross-examination, impeachment, and rebuttal. Organizing information by witness helps attorneys efficiently prepare for testimony and adapt to developments that occur during trial.
- Exhibits are among the most frequently used trial materials. Maintaining accurate exhibit lists, authentication and foundation notes, stipulations, and exhibit-tracking forms helps the trial team monitor the status of exhibits and present evidence efficiently.
- Impeachment and rebuttal materials allow the attorney to respond to credibility challenges, contradictory testimony, and unexpected evidence. Because these materials may be needed without warning, they should be organized for immediate access.
- Jury-selection materials, including juror questionnaires, jury charts, seating charts, and voir dire notes, help attorneys evaluate prospective jurors and make informed decisions regarding challenges for cause and peremptory challenges. Effective organization of these materials can significantly improve the efficiency of jury selection.

Organizing and Operating the Trial War Room

- The trial war room serves as the operational center of the trial team. By maintaining organized physical and electronic files, facilitating communication, and ensuring that information remains current, the war room helps attorneys respond quickly to developments without disrupting the presentation of the case.

The Paralegal’s Role During Trial

- Paralegals play a central role in trial support. Their responsibilities often include maintaining trial notebooks, organizing witness and exhibit information, coordinating communications, updating trial materials, assisting during voir dire, supporting war-room operations, and responding to the many logistical and informational demands that arise during trial.
- Successful trial paralegals combine strong organizational skills, attention to detail, adaptability, professionalism, and effective communication. Although much of their work occurs behind the scenes, their efforts help ensure that attorneys can focus on advocacy while the trial proceeds efficiently and effectively.

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10.10: Summary

The trial is the culmination of months, and sometimes years, of work devoted to investigating facts, conducting discovery, preparing evidence, drafting motions, and developing trial strategy. Once trial begins, the focus shifts from preparing the case to presenting it effectively. Success often depends not only on the quality of the evidence but also on the ability of the trial team to organize, locate, and use information efficiently in a fast-paced courtroom environment.

The trial notebook serves as the central resource for managing that information. By bringing together witness materials, exhibits, discovery documents, jury-selection materials, legal research, impeachment and rebuttal evidence, and other essential resources, the trial notebook allows attorneys to quickly access the information needed to examine witnesses, respond to objections, and address issues as they arise during trial.

Effective trial support extends beyond the contents of the notebook. Jury selection materials, exhibit-management systems, witness files, and legal research resources all help the attorney make informed decisions and adapt to changing circumstances. Because witness testimony, evidentiary rulings, and trial strategy often evolve throughout the proceedings, accurate and timely updates to these materials are essential.

The trial war room serves as the operational center of the trial team. Whether physical, electronic, or a combination of both, it provides a centralized location for organizing documents, coordinating witnesses, managing exhibits, conducting research, sharing information, and responding to developments occurring in the courtroom. A well-organized war room allows the trial team to work efficiently and maintain focus on presenting the case.

Throughout the trial process, paralegals frequently serve as the organizational backbone of the litigation team. By maintaining trial materials, coordinating communications, managing information, and responding to unexpected developments, they help create an environment in which attorneys can concentrate on advocacy and the presentation of evidence. Although much of their work occurs behind the scenes, effective trial support is often a critical factor in the successful presentation of a case.

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Terms with Definitions

Challenge for Cause: A request to remove a prospective juror because the juror cannot be fair, impartial, or otherwise qualified to serve.

Closing Argument: The final presentation by counsel summarizing the evidence and explaining why the facts and law support a favorable verdict.

Electronic Trial Notebook: A digital version of a trial notebook that stores and organizes trial materials using electronic files, hyperlinks, search tools, and document-management systems.

Exhibit Tracking Form: A document used to monitor the status of exhibits during trial, including whether they have been offered, admitted, excluded, withdrawn, or reserved for later ruling.

Hot Docs File: A collection of frequently referenced documents maintained separately for quick access during trial.

Jury Chart: A visual diagram of prospective jurors used to record biographical information, voir dire responses, observations, and jury-selection notes.

Juror Questionnaire: A form completed by prospective jurors to provide background information relevant to jury selection.

Opening Statement: An attorney's initial presentation outlining the facts, legal issues, and evidence expected to be presented during trial.

Peremptory Challenge: A method of removing a prospective juror without stating a reason, subject to constitutional and other legal limitations.

Trial Notebook: An organized collection of the documents, information, and reference materials most likely to be needed during trial.

Voir Dire: The process by which prospective jurors are questioned to determine whether they can serve as fair and impartial jurors.

War Room: >A centralized location where the trial team organizes information, coordinates activities, and manages resources needed to support the trial.

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