

A defendant sued in federal court seeks information from a nonparty witness.

Which of the following discovery devices can the defendant use to obtain this information?

- A. Interrogatory.
- B. Mental exam.
- C. Oral deposition.
- D. Request for admissions.

## Explanation:

### Methods of discovery

<b>Depositions</b>	<ul style="list-style-type: none"><li>• Written or oral examination of party or witness under oath</li><li>• 10 per party</li></ul>
<b>Interrogatories</b>	<ul style="list-style-type: none"><li>• Written questions served on party</li><li>• Serve up to 25</li><li>• Written responses due within 30 days of service</li></ul>
<b>Request for production</b>	<ul style="list-style-type: none"><li>• Request served on party (or subpoena served on nonparty) to produce &amp; allow inspection of documents, electronic information, tangible items, or land</li><li>• No limit</li><li>• Written response due within 30 days of service</li></ul>
<b>Requests for admission</b>	<ul style="list-style-type: none"><li>• Requests served on other party to admit truth of facts within scope of discovery</li><li>• No limit</li><li>• Written response due within 30 days of service</li></ul>
<b>Physical/mental exams</b>	<ul style="list-style-type: none"><li>• Order by court or parties' agreement for physical or mental examination of party if those conditions are in controversy</li></ul>

**Discovery** is the pretrial phase of a lawsuit during which the parties can obtain information related to the case from other parties and nonparties through various methods. A **deposition** is a discovery method in which a party conducts a written or oral **examination of a party or nonparty** under oath and outside of court. Therefore, the defendant can use an oral deposition to get information from the nonparty witness—and, if necessary, can obtain a subpoena to compel the nonparty's attendance.

**(Choice A)** Interrogatories are written questions served on another *party* that may inquire about any matter within the scope of discovery—but they cannot be served on a nonparty.

**(Choice B)** A court can only order a **physical or mental exam** of a *party* by a suitably licensed or certified examiner if that party's physical or mental condition is in controversy.

**(Choice D)** A request for admissions is a discovery method in which a party requests that another *party* admit the truth of specified facts within the scope of discovery. But this method cannot be used against a nonparty.

### Educational objective:

During discovery, the parties can use various methods to obtain information and evidence concerning the case from other parties and nonparties. A deposition is a discovery method

in which a party conducts a written or oral examination of a party or nonparty under oath and outside of court.

**References**

- Fed. R. Civ. P. 30–31 (depositions).

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