

Practice Makes Perfect

Discovery



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Let's set the record straight about discovery in district court. The rules are very, very simple. First, discovery is not permitted in civil infraction actions. See MCR 2.302(A)(3).

Second, discovery is not required in district court misdemeanor actions. See Michigan Supreme Court Administrative Order 1999-3: "We wish to inform the bench and bar that MCR 6.201 applies only to criminal felony cases."

Third, the district court does not even have the authority to order discovery in district court misdemeanor actions. See *People v Nickerson*, unpublished memorandum opinion of the Court of Appeals, March 13, 2007 (Docket No. 271459): "[T]he argument advanced by plaintiff, that a trial court has the inherent authority to order discovery even in the absence of a statute or court rule, is without merit."

Finally, the fact that a police video is recycled is not a reason to file a motion to suppress: "Absent the intentional suppression of evidence or a showing of bad faith, a loss of evidence that occurs before

a defense request for its production does not require reversal." *People v Knott*, unpublished memorandum opinion of the Court of Appeals, May 18, 2001 (Docket No. 221186). "Evidence which is destroyed intentionally pursuant to departmental policy to save space does not indicate bad faith or an intent to deprive a defendant of evidence."

In the end, most county prosecutors and local ordinance prosecutors will work with you to ensure that you have basic discovery at some point during the case if you really need it (often upon payment of an appropriate invoice for the requested items). After all, civility and the exchange of information are the keys to ensuring that the interests of justice are achieved cost-effectively and with appropriate judicial economy. But now that you know the rules, you might want to consider re-naming your discovery forms using the word "request" rather than "demand." Oh, and don't be afraid to ask the prosecutor how you might go about obtaining what you need. A standard form mailed out with your appearance might not do the trick.