

9.7 DISCOVERY OF PUBLIC DOCUMENTS

A number of courts have held that discovery of public documents cannot be ordered.¹ The reason underlying the rule is that if a document is a matter of public record, it is equally available to both parties, and there is no justification to order the production of such a document.² Under particular circumstances, however, including a showing of hardship, the production of matters of public record as part of discovery has been required.³

¹ See *In re Kohn*, 357 So. 2d 279, 282 (La. Ct. App. 1978); *Connolly v. Comm’r of Pub. Safety*, 373 N.W.2d 352, 354 (Minn. Ct. App. 1985) (availability of documents in government file sufficient response to interrogatories and request for production of documents); *In re John Hancock Mut. Life Ins. Co.*, 81 Misc. 2d 269, 366 N.Y.S.2d 93, 95 (1975).

² See *Inc. Town of Sallisaw v. Chappelle*, 67 Okla. 307, 171 P. 22, 23 (1918).

³ See *Martin v. Weld County*, 43 Colo. App. 49, 54, 598 P.2d 532, 535 (1979); *Marshall v. Elward*, 78 Ill. 2d 366, 374, 399 N.E.2d 1329, 1333 (1980); *State ex rel. Von Hoffman Press v. Saitz*, 604 S.W.2d 770, 722 (Mo. Ct. App. 1980).