

Discovery

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AGENDA

01 Why Discovery Matters and
What's In It for You

02 Discovery Planning

03 Written Discovery

04 Document Management

05 Motion Practice

06 Professionalism

Why Discovery Matters

Discovery drives case value, settlement posture, and trial strategy

Discovery also drives costs and drives clients' crazy.

Courts expect proportional, cooperative discovery—sanctions increasingly common for gamesmanship.



What's In It for You?

Manage deadlines and learn the rules.

Manage ever-evolving technology.

Provide value to teammates

Connect with clients

Exercise “judgment” muscle in assessing potential evidence.

Discovery Planning

Begin with the End in Mind

- **Case**
- **Client**
- **Coworkers**
- **Opposing Counsel**



Discovery Planning

- Send litigation hold immediately
- Create an internal discovery map: people, documents, systems
- Be creative re: other sources of important information (third parties, friendly witnesses)
- Identify key issues, defenses, and information gaps based on pleadings
- Align discovery with case theory and timeline.
- Build in room for follow-ups and supplementation.
- Consider proportionality early: burden, cost, and importance
- Consider need for Protective Order

Written Discovery

Crafting Effective Requests for Production

- Do:
 - Read the rules
 - Write clear and concise requests.
 - Use definitions effectively.
 - Ask tailored questions tied to your claims or defenses.
- Don't:
 - Ask for Everything, for All Time
 - Re-use Forms

Responding to Written Discovery

- Do:
 - Establish internal review workflows that involve client and legal team
 - Track deadlines on a shared team calendar
 - Use objections sparingly when they reduce ambiguity—not boilerplate.
 - Reserve privileges carefully: attorney-client, work product, HIPAA, trade secrets.
 - Identify what you're producing and what you're not
- Don't:
 - Use form objections or re-use forms
 - Hide the ball

Disputes about Written Discovery

- Do:
 - Prepare a concise agenda.
 - Use early calls to build rapport and streamline issues.
 - Document agreements in writing.
 - Be prepared to fight for discovery that matters.
- Don't:
 - Fight over everything

Document Management & Practical E-Discovery

Working With Clients on Document Collection

- Do:
 - Give meaningful instructions to clients.
 - Soak up knowledge from teammates/vendors
 - Validate collections by sampling
- Don't:
 - Collect everything
 - Blindly trust client/vendor to do a targeted collection

E-Discovery Basics

- Do:
 - Evaluate whether metadata matters in your case
 - Get comfortable with e-discovery technology platform/software/vendor
 - Talk budget and risk tolerance with clients.
 - Keep a production log
- Don't
 - default to full e-discovery workflows when it's not needed

Document Review Strategies



Document Review Strategies

- Do:
 - Create a document review protocol
 - Master search term reports
 - Master tagging and foldering systems: relevance, issues, privilege.
 - Explore using AI-assisted review.
 - Create a “key documents” set early.
 - Maintain consistency across review
- Don't:
 - Forget about Quality Control

Discovery Motion Practice

Common Causes

- Overbroad Requests
- Boilerplate objections
- Incomplete productions
- Inadequate supplementation

Strategies before filing

- Do:
 - Know your Judge
 - Identify deficiencies in writing
 - Confer in good faith
 - Keep requests tight and focused, with clear/workable relief
- Don't:
 - Dilute your motion with marginal items.

Professionalism

Ethical Pitfalls

- **ORPC Duties Relevant to Discovery**
 - Candor to tribunal.
 - Avoiding destruction/spoliation.
 - Confidentiality.
- **Working With Difficult Opposing Counsel**
 - Keeping communications professional.
 - Using written summaries to memorialize agreements.

Questions?

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THANK YOU