

Magistrate Judge Shushan's Guidelines to the Conduct of Litigation

These guidelines are intended to lay the groundwork for professional, efficient and yes, even collegial conduct by counsel in their discovery efforts in a case. I hope and expect that these observations will assist counsel in effectively representing their clients' interests while simultaneously conducting discovery in a manner best calculated to "secure the just, speedy and inexpensive determination of every action and proceeding." F.R.Civ.P. 1.

When you get the file, speak to your opposing counsel. Pick up the phone and introduce yourself and talk about the case and initial disclosure. Suggest that you get a cup of coffee before or after the first deposition so that you get to know counsel on a more personal basis. Over the course of the case, try to avoid communicating solely by email and instead pick up the phone and talk. This is particularly important when preparing for production of electronically stored information where the parties need to agree to the format of production, availability of metadata, etc.

Initial disclosures. Don't opt out of initial disclosures. The required disclosures under Rule 26(a)(1)(A) kick starts the case and allows the other party to see what the opponent has in support of its case.

Meet and confer. When a discovery dispute arises, don't just email the other lawyer. You should confer either in person or by telephone and discuss each and every objection or insufficiency and agree to, for example, narrow the request for production of documents and thereby resolve the dispute.

Discovery motions should be rare. Because of the meet and confer process, discovery disputes should be rare. The only motions that should be filed are those that are truly justiciable

discovery disputes that the parties have tried to resolve in good faith before resorting to motion practice.

Conduct during depositions. Pursuant to Rule 30(c)(2), “an objection must be stated concisely in a non-argumentative and non-suggestive manner. A person may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the Court, or to present a motion under Rule 30(d)(3).” Please don’t make speaking or suggestive objections during a deposition or instruct a witness not to answer when you have no right to do so. You will lose a motion on that issue.

Scope of Discovery. Discovery is not a fishing expedition and questions in depositions and requests for production of documents should be limited in time or place. Objections should be limited to substantive objections – not the usual boilerplate which is meaningless to the determination of a motion. If you do not provide a substantive objection, the objection will be overruled.

Remember that every answer to discovery should not be “subject to” or with “reservation” except for supplementation of discovery pursuant to Rule 26. If you are actually withholding documents or responses to written discovery based on privilege, counsel must prepare a privilege log which enables the opponent to assess the viability of the claim. See Rule 26(b)(5)(A). For example, generally speaking, attorney-client privilege is exempt from discovery and those documents should be included in your privilege log so the other party can confirm the communications are in fact privileged.

Conclusion. It is extremely important to communicate by phone or in person from commencement of litigation through conclusion. The preparation of a case for trial is a collaborative effort even though you are cooperating with your adversary.

Familiarize yourself with the Local Rules on the Court's website as well as Rules 26 through 37 F.R.Civ.P. At all times you should conduct yourself with "dignity, civility, courtesy and a sense of fair play." Code of Professionalism of the State of Louisiana – adopted by this District, also on the Court's website: <http://www.laed.uscourts.gov>.

Follow these basic guidelines and you will do well in this division and any other division in the Eastern District.

Thank you.

Sally Shushan

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