Practical Pretrial Discovery Tips in Federal District Court

Faculty of Federal Advocates
Colorado Springs, Colorado

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12:00 - 1:15 p.m.
First Bank Building
2 N. Cascade
Colorado Springs, Colorado

By

Michael J. Watanabe
Lead United States Magistrate Judge
District of Colorado

United States District Court Web Site:
www.cod.uscourts.gov

1. The Federal Rules of Civil Procedure and the U.S. District Court for the District of Colorado Local Rules of Practice concerning discovery are designed to allow each party to receive non-privileged information that may be relevant to the issues before a court. The rules were designed to operate **without court intervention (emphasis added**);

2. Read and fully understand the requirements under Fed. R. Civ. P. 26. In particular, Rule 26(f) and know what needs to be covered during the Rule 26(f) meeting between counsel or pro se litigants. You need to sit down with the other counsel or pro se litigant over a cup of coffee or tea and work out everything that you are suppose to work out pursuant to Rule 26(f). **An effective Rule 26(f) conference does not take place over the telephone, by e-mail, or by text messaging (emphasis added).** Sitting down face-to-face with the other counsel or pro se litigant provides a proper environment to prepare adequately a proposed Rule 16 Scheduling Order. If your case involves substantial Electronically Stored Information ("ESI"), then it is advisable to have your client and your client's IT person with you at the Rule 26(f) meeting since your IT person can assist you in how you will receive discovery (i.e. in what format), provide you with valuable information on how each other's computer systems are set up, and help you comply with the requirements of the Rule 16 Scheduling Order. *See* paragraph 6 contained in the stock Rule 16 Scheduling Order (Appendix F.1.) attached to the District of Colorado Local Rules of Practice. These IT people can help with term searches, time frames to be searched, data bases to be searched, etc., to help minimize the cost of discovery;

3. Be professional at all times to the court (i.e. judge) and his/her staff, opposing counsel and their staff, opposing parties, pro se litigants, and court personnel. This means that you treat each person listed above with respect and dignity. In other words, use common courtesy at all times. "Rambo" type behavior is **not acceptable** and is unproductive. You can be a strong advocate for your client without "Rambo" type behavior;

4. Abusive behavior by counsel during any deposition is prohibited and unprofessional. Be prepared, be punctual, and be professional during all depositions. Unprofessional behavior **will not be tolerated**. *See* D.C.COLO. LCivR 30.1 and D.C.COLO.LCivR 30.3 on scheduling depositions and sanctions for abusive deposition conduct. The Magistrate Judges on the U.S. District Court for the District of Colorado who handle most, but not all, discovery disputes normally make themselves available, time permitting, on their dockets, to address any issue that may arise during a deposition in progress, including but not limited to, abusive behavior by a party, witness or counsel. Most often, these types of issues are handled by the Magistrate Judge *via* the telephone with the court reporter at the site of the deposition making the record. Keep in mind that if the Magistrate Judge determines that a party, witness or counsel has violated D.C.COLO.LCivR 30.3, then sanctions can be imposed. See D.C.COLO.LCivR 30.3 B, C, and D;

5. Meet and confer before filing any Motion to Compel discovery as required under D.C.COLO.LCivR 7.1 A. Meet and confer **does not mean** texting the other side, leaving a voice message, or sending an e-mail. You need to speak directly to the other side preferably in person and try and work out the perceived discovery dispute keeping in mind that the exchange of discovery is designed to take place without court intervention. If counsel or the pro se litigant uses some good old fashioned common sense, then most perceived discovery disputes can be resolved between the parties without court intervention. The last resort should be court intervention in discovery disputes.

REMEMBER

COMMUNICATION IS THE SPICE OF LIFE

We tweet,
we text,
we e-mail,
we blog,
we stream,
we surf,

Everybody's chatting,
but is anybody listening?

Why Lawyers need to revive
the vanishing art of conversation.

We need to talk.....(emphasis added)

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