

# DISCOVERY BEST PRACTICES & A VIEW FROM THE BENCH

Practical advice on effective, ethical and efficient discovery

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## **Don't assume opposing counsel is the enemy**

You may never want to get a beer with them, but it is best not to start out assuming the worst.



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# RULE 194 DISCLOSURES

- **194.1 Duty to Disclose; Production. (a) Duty to Disclose. Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.**
  - (4) the amount and any method of calculating economic damages;
  - (5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
  - (7) any indemnity and insuring agreements;
  - (9) any witness statements described in Rule 192.3(h); and
  - (12) the name, address, and telephone number of any person who may be designated as a responsible third party.

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## Efficiency Tip

- ❖ Upon filing/receiving first Answer, Calendar 30 days to provide Disclosures
- ❖ Prepare Discovery at the time you prepare Petition *or before you receive first Answer*
- ❖ Send Interrogatories, Request for Productions and Request for Admissions when you send your Disclosures *or re-calendar as needed based on Answer dates of multiple defendants*
- ❖ Immediately follow up on incomplete answers and objections
- ❖ Review periodically regarding need to supplement.

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## ETHICS REMINDER

- (c) **Effect of signature on discovery request, notice, response, or objection.** The signature of an attorney or party on a discovery request, notice, response, or objection constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, notice, response, or objection:
- (1) is consistent with the rules of civil procedure and these discovery rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
  - (2) has a good faith factual basis;
  - (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
  - (4) is not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

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## Effectiveness Tip

- ❖ **Personalize/tailor your discovery for the case**
- ❖ **Proof before sending**
- ❖ **Consider holding select inquiries for later**
- ❖ **File Motions to Compel!**

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