THE DO'S AND DON'TS OF WRITTEN DISCOVERY AND OBJECTIONS

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THE FOUNDATION OF DISCOVERY RIGHTS AND LIMITATIONS – RULE 26

Rule 26(b)(1) – "In general. Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below."

Take away: Discovery must be (i) **relevant** and (ii) **proportional**.

RULE 26 (cont.)

What is "relevant?"

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence;

(b) the fact is of consequence in determining the action.

See Utah Rule of Evidence 401.

RULE 26 (cont.)

What is "proportional?"

Utah R. Civ. P. 26:

(b)(2) Proportionality. Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is **reasonable, considering the needs of the case**, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely **benefits** of the proposed discovery outweigh the **burden** or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is **more convenient, less burdensome or less expensive**; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

RULE 26 (cont.)

Who has the burden of showing relevance and proportionality?

(b)(3) Burden. The party seeking discovery always has the burden of showing proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

WRITTEN DISCOVERY

Rule 33: Interrogatories to parties.

(a) Availability; procedures for use. During standard discovery, any party may serve written interrogatories upon any other party, subject to the limits of Rule 26(c)(5). Each interrogatory shall be separately stated and numbered.

(b) Answers and objections. The responding party shall serve a written response within 28 days after service of the interrogatories. The responding party shall restate each interrogatory before responding to it. Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to. **If an interrogatory is objected to, the party shall state the reasons for the objection.** Any reason not stated is waived unless excused by the court for good cause. An interrogatory is not objectionable merely because an answer involves an opinion or argument that relates to fact or the application of law to fact. **The party shall answer any part of an interrogatory that is not objectionable.**

WRITTEN DISCOVERY (cont.)

Rule 33: Interrogatories to parties. (cont.)

(c) Scope; use at trial. Interrogatories may relate to any discoverable matter. Answers may be used as permitted by the Rules of Evidence.

(d) Option to produce business records. If the answer to an interrogatory may be found by inspecting the answering party's business records, including electronically stored information, and the burden of finding the answer is substantially the same for both parties, the answering party may identify the records from which the answer may be found. The answering party must give the asking party reasonable opportunity to inspect the records and to make copies, compilations, or summaries. The answering party must identify the records in sufficient detail to permit the asking party to locate and to identify them as readily as the answering party.

WRITTEN DISCOVERY (cont.)

Rule 34: Production of documents and things. . . .

(a) Scope.

(a)(1) Any party may serve on any other party a request to produce and permit the requesting party to inspect, copy, test or sample any designated discoverable documents, electronically stored information or tangible things (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) in the possession or control of the responding party.

. . . .

WRITTEN DISCOVERY (cont.)

Rule 34: Production of documents and things. . . . (cont.)

(b) Procedure and limitations.

(b)(1) The request must identify the items to be inspected **by individual item or by category, and describe each item and category with reasonable particularity**. The request must specify a reasonable date, time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

What is "reasonable particularity"?

The recipient should be able to determine what is being sought without engaging in mental gymnastics to determine what falls within the scope of the request. So-called "omnibus phrases" are improper unless their scope is limited.

WRITTEN DISCOVERY (cont.)

Rule 34: Production of documents and things. . . . (cont.)

(b)(2) The responding party must serve a written response within 28 days after service of the request. The responding party must restate each request before responding to it. The response must state, with respect to each item or category, that inspection and related acts will be permitted as requested, or that the request is objected to. **If the party objects to a request, the party must state the reasons for the objection with specificity.** Any reason not stated is waived unless excused by the court for good cause. **An objection must state by individual item or by category whether any responsive items are being withheld on the basis of that objection.** An objection that states the terms that have controlled a search for responsive items qualifies as a statement that items outside of the search terms may have been withheld. The party must identify and permit inspection of items responsive to any part of a request that is not objectionable. If the party objects to the requested form or forms for producing electronically stored information—or if no form was specified in the request—the responding party must state the form or forms it intends to use.

WRITTEN DISCOVERY (cont.)

Rule 34: Production of documents and things. . . . (cont.)

(c) Form of documents and electronically stored information.

(c)(1) A party who produces documents for inspection must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the request.

(c)(2) If a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable.

WRITTEN DISCOVERY (cont.)

Rule 36. Request for admission.

(a) Request for admission. A party may serve upon any other party a written request to admit the truth of any discoverable matter set forth in the request, including the genuineness of any document. **The matter must relate to statements or opinions of fact or of the application of law to fact.** Each matter shall be separately stated and numbered. A copy of the document shall be served with the request unless it has already been furnished or made available for inspection and copying. **The request shall notify the responding party that the matters will be deemed admitted unless the party responds within 28 days after service of the request**.

WRITTEN DISCOVERY (cont.)

Rule 36. Request for admission. (cont.)

(b) Answer or objection.

(b)(1) **The matter is admitted unless, within 28 days after service of the request, the responding party serves upon the requesting party a written response.**

(b)(2) The answering party shall restate each request before responding to it. Unless the answering party objects to a matter, **the party must admit or deny the matter or state in detail the reasons why the party cannot truthfully admit or deny**. A party may identify the part of a matter which is true and deny the rest. A denial shall fairly meet the substance of the request. Lack of information is not a reason for failure to admit or deny unless, after reasonable inquiry, the information known or reasonably available is insufficient to enable an admission or denial. A party who considers the subject of a request for admission to be a genuine issue for trial may not object on that ground alone but may, subject to Rule 37(c), deny the matter or state the reasons for the failure to admit or deny.

(b)(3) If the party objects to a matter, the party shall state the reasons for the objection. Any reason not stated is waived unless excused by the court for good cause. The party shall admit or deny any part of a matter that is not objectionable. It is not grounds for objection that the truth of a matter is a genuine issue for trial.

WRITTEN DISCOVERY (cont.)

Rule 36. Request for admission. (cont.)

(c) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment if the presentation of the merits of the action will be promoted and withdrawal or amendment will not prejudice the requesting party. Any admission under this rule is for the purpose of the pending action only. It is not an admission for any other purpose, nor may it be used in any other action.

THE EXCLUSIONARY RULE

Rule 26(a)(1). Initial Disclosures.

[A] party shall, without waiting for a discovery request, serve on the other parties:

(a)(1)(A) the name and, if known, the address and telephone number of:

(a)(1)(A)(i) each individual likely to have discoverable information supporting its claims or defenses . . . identifying the subjects of the information; and

(a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and . . . a summary of the expected testimony;

(a)(1)(B) a copy of all documents . . . that the party may offer in its case-in-chief . . . ;

(a)(1)(C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of injuries suffered;

(a)(1)(D) a copy of any agreement under which any person may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and

(a)(1)(E) a copy of all documents to which a party refers in its pleadings.

THE EXCLUSIONARY RULE

Rule 26(d). Requirements for disclosure or response; disclosure or response by an organization; failure to disclose; initial and supplemental disclosures and responses.

(d)(1) A party shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

. . .

(d)(3) A party is not excused from making disclosures or responses because the party has not completed investigating the case or because the party challenges the sufficiency of another party's disclosures or responses or because another party has not made disclosures or responses.

(d)(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, **that party may not use the undisclosed witness, document or material at any hearing or trial** unless the failure is harmless or the party shows good cause for the failure.

(d)(5) If a party learns that a disclosure or response is incomplete or incorrect in some important way, the party must timely serve on the other parties the additional or correct information if it has not been made known to the other parties. The supplemental disclosure or response must state why the additional or correct information was not previously provided.

THE EXCLUSIONARY RULE

Advisory Committee Notes to Rule 26:

"**The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in-chief**. To make the disclosure requirement meaningful, and to discourage sandbagging, parties must know that if they fail to disclose important information that is helpful to their case, they will not be able to use that information at trial. The courts will be expected to enforce them unless the failure is harmless or the party shows good cause for the failure. . . .

If a party fails to disclose or to supplement timely its discovery responses, that party cannot use the undisclosed witness, document, or material at any hearing or trial, absent proof that non-disclosure was harmless or justified by good cause. . . . Not being able to use evidence that a party fails properly to disclose provides a powerful incentive to make complete disclosures. This is true only if trial courts hold parties to this standard. Accordingly, although a trial court retains discretion to determine how properly to address this issue in a given case, the **usual and expected result should be exclusion of the evidence**."

"Even if a plaintiff cannot complete its computation of damages before future events take place, 'the fact of damages . . . and the method for calculating the amount of damages' must be apparent in initial disclosures.'" *Sleepy Holdings LLC v. Mountain West Title*, 2016 UT App 62, ¶ 14 (quoting *Stevens-Henager College v. Eagle Gate College*, 2011 UT App 37, ¶ 22).

"[S]ound policy supports strict enforcement of this rule." *Baumann v. The Kroger Company*, 2016 UT App 165, ¶ 15.

BAD DISCOVERY REQUESTS

INTERROGATORY NO. 1: Please set forth with particularity and in detail each and every fact known to you which would tend to support each claim asserted in your complaint. In answering this Interrogatory, please include the following as to each claim:

- The factual basis for each element of each claim;
- The name, address, telephone number of each and every person of whom you are aware, who has facts, or who may have facts, which would tend to support or contradict each claim;
- A complete and accurate description of any document of which you are aware which would tend to support or contradict each defense. Documents should be described by date, name, author, summary of content, location of original, or in the event that you do not know where the originals exists, the location of copies.

BAD DISCOVERY REQUESTS

INTERROGATORY NO. 2: Identify all facts that tend to disprove any of your claims in this case.

INTERROGATORY NO. 3: Please set forth with particularity and in detail the date, time of day, means of communication (face to face, written, telephone, or other), and substance of all communications which transpired between the Defendants between January 1, 2016, and December 31, 2017, which relate in any way to the subject matter of this case.

INTERROGATORY NO. 4: Identify and provide a summary of the anticipated testimony of all persons who you may elect to call as a witness at trial.

INTERROGATORY NO. 5: To the extent you deny any of the foregoing Requests for Admission, state the reasons and factual basis for your denial. [Not necessarily bad, but know the potential consequences.]

BAD DISCOVERY REQUESTS

REQUEST FOR PRODUCTION NO. 1: Please produce each and every document that relates to the subject matter in this case.

REQUEST FOR PRODUCTION NO. 2: Please produce each and every document from which you have extracted material or information in drafting, or that is referenced directly in, your responses to these discovery requests or your answer to the complaint.

REQUEST FOR PRODUCTION NO. 3: Please produce each and every document that tends to disprove any of your claims in this case.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents you intend to offer as exhibits at trial or use in any deposition in this case.

BAD DISCOVERY REQUESTS

REQUEST FOR PRODUCTION NO. 5: Please produce each and every document or thing supporting your defenses (or claims).

REQUEST FOR PRODUCTION NO. 6: Please produce in native format a copy of all communications between you and any third persons concerning the subject matter of the above-entitled action, and/or the Complaint and/or otherwise related to this litigation.

The requesting party must describe, with reasonable particularity, what information is sought in discovery.

You cannot shift the burden to the other side to analyze your case or figure out what it is that you want.

BAD DISCOVERY OBJECTIONS

GENERAL OBJECTIONS:

1. Plaintiff objects to the Interrogatories, and to any individual Interrogatory set forth therein, to the extent that they seek information protected from discovery by the attorney-client privilege, the work product doctrine, or any other privilege or immunity.

2. Plaintiff objects to the Interrogatories, and to any individual Interrogatory set forth therein, to the extent that they are vague, ambiguous, overbroad, or otherwise lack sufficient precision to permit a response. Plaintiff has made an effort to respond to the Interrogatories, where possible, as it understands and interprets them.

3. Plaintiff objects to the Interrogatories, and any individual Interrogatory set forth therein, to the extent that any Interrogatory calls for information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

BAD DISCOVERY OBJECTIONS

GENERAL OBJECTIONS:

4. Plaintiff objects to the Interrogatories, and to any individual Interrogatory set forth therein, to the extent that obtaining the requested information would impose upon it an undue burden, and to the extent that the Requests are oppressive and/or intended to harass.

5. Plaintiff expressly incorporates each of the foregoing General Objections into each specific response to the Interrogatories set forth below as if set forth in full therein. An answer to an Interrogatory shall not work as a waiver of any applicable specific or general objection to an Interrogatory.

6. Plaintiff objects to the Discovery Requests to the extent they seek information or documents controlled or possessed by third parties, not under Plaintiff's control. To the extent the information or documents requested are in the possession of a third party, it is more convenient, less burdensome and less expensive for the Requesting Party to seek discovery directly from that third party.

BAD DISCOVERY OBJECTIONS

GENERAL OBJECTIONS:

7. Responding Party objects to the Discovery Requests to the extent they seek to impose any requirements upon Responding Party beyond those imposed by the Rules of Civil Procedure.

8. Plaintiff objects to each of the Discovery Requests to the extent that the Request uses terms or words that render the Request vague, ambiguous and/or unintelligible.

9. Plaintiff objects to the Discovery Requests to the extent they seek information that is confidential.

10. To the extent that Plaintiff agrees to produce documents for review and inspection pursuant to the Discovery Requests, it reserves the right to produce such documents only after the documents have been numbered, imaged or copied, and reviewed for privilege and confidentiality.

BAD DISCOVERY OBJECTIONS

GENERAL OBJECTIONS:

11. Plaintiff's investigation of this matter is on-going. Accordingly, Plaintiff reserves the right to supplement, modify, amend or revoke the responses to the Discovery Requests if it becomes known or appears at any time (i) that errors or omissions have been made, or (ii) that additional or more accurate information becomes available.

Rule 26(d)(3) A party is not excused from making disclosures or responses because the party has not completed investigating the case or because the party challenges the sufficiency of another party's disclosures or responses or because another party has not made disclosures or responses.

Rule 26(d)(5) If a party learns that a disclosure or response is incomplete or incorrect in some important way, the party must timely serve on the other parties the additional or correct information if it has not been made known to the other parties. The supplemental disclosure or response must state why the additional or correct information was not previously provided.

BAD DISCOVERY OBJECTIONS

GENERAL OBJECTIONS:

"General Objections" are improper and meaningless.

STOP USING THEM!

Utah R. Civ. P. 34(b)(2): "If the party objects to a request, the party must state the reasons for the objection with specificity. . . . An objection must state by individual item or by category whether any responsive items are being withheld on the basis of that objection."

"It is not appropriate to expect the court to sift through general objections to determine which ones might apply to a particular topic." *Wyatt v. ADT Sec. Servs., Inc.*, 2011 WL 1990473, at *2 n.1 (N.D. Okla. May 23, 2011).

"[F]ailure to make particularized objections to document requests constitutes a waiver of those objections." *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006).

BAD DISCOVERY OBJECTIONS

BOILERPLATE OBJECTIONS:

INTERROGATORY NO. 1: State the manner in which you contend that Defendant breached the contract that is the subject of this action.

Objection: Plaintiff objects to the foregoing interrogatory on the grounds that it is vague and ambiguous, overly broad, and unduly burdensome and seeks information protected by the attorney-client and/or work product privilege. Plaintiff also objects to the extent that the Request seeks information that is equally available, or more easily available, to the requesting party.

Response: Without waiving the foregoing objections, Plaintiff responds that Defendant breached the contract by failing to complete construction by the deadline stated therein.

BAD DISCOVERY OBJECTIONS

BOILERPLATE OBJECTIONS:

INTERROGATORY NO. 4: Please identify all business entities/organizations and individuals involved in the design, financing, development, construction, management and marketing of the Property.

> **Response:** Defendants object on grounds that this Interrogatory is overly broad and requests information which is not relevant, and which is confidential and proprietary. Without waiving the foregoing objections, the following entities were involved in the design, construction, managing, and marketing of the relevant phases on the Property: [entities listed].

"The biggest single problem with [the responding party's] document responses, however, is that when [it] indicates documents will be produced, it is unclear what is being produced and what is not. Most of [the responding party's] responses state that 'Without waiving and subject to said objections, see _____. . . . Once a party has decided to produce documents, it has the duty—at a minimum—to identify what it is producing. A party that objects and produces creates an ambiguity as to what documents, if any, have been withheld." *Howard v. Segway, Inc.*, 2013 WL 869955, *3 (N..D. Okla. Mar. 7, 2013).

BAD DISCOVERY OBJECTIONS

BOILERPLATE OBJECTIONS:

"[B]oilerplate objections regurgitating words and phrases from Rule 26 are completely unacceptable." *Mills v. East Gulf Coal Preparation Co., LLC*, 259 F.R.D. 118, 132 (S.D.W.Va. 2009).

"Objections must be specific and fully explained or else the requesting party is unable to evaluate the objection's merits and determine whether to challenge it." *Howard v. Segway, Inc.*, 2013 WL 869955, *3 (N.D. Okla. Mar. 7, 2013).

"Parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons, and then state that 'notwithstanding the above,' the party will respond to the discovery request, subject to or without waiving such objection. Such objection and answer preserves nothing, and constitutes only a waste of effort and the resources of both the parties and the court." *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399, 401 (S.D. Fla. 2008).

Objections must "show specifically how each [request] is not relevant or how each question is overly broad, burdensome or oppressive." *Josephs v. Harris Corporation*, 677 F.2d 985, 992 (3rd Cir. 1982).

BAD DISCOVERY OBJECTIONS

BOILERPLATE OBJECTIONS:

INTERROGATORY NO. 2: Identify the material facts and legal bases of your claim of Negligence, specifically as applied to Dr. Smith. In responding to this interrogatory, please identify the duty or duties owed by Dr. Smith to Plaintiff and the manner in which Defendant Doe breached each duty.

Response: Plaintiff objects to this interrogatory on the grounds that it is premature, compound, overly broad, overly burdensome, asks for a legal conclusion, and asks for privileged work product. Notwithstanding these objections, Plaintiff identifies the documents produced with its Initial Disclosures and fifteen supplements along with all of the documents produced in this matter. Additionally, there have been over 25 depositions taken in this case and many of these witnesses' testimony supports Plaintiff's claims against Dr. Smith. Moreover, Defendant Doe has produced volumes of documents that support Plaintiff's claims. Plaintiff reserves the right to supplement this answer as more information becomes available.

BAD DISCOVERY OBJECTIONS

BOILERPLATE OBJECTIONS:

"Plaintiffs may not answer the interrogatory by generally referring Defendant to the documents produced . . . but rather must indicate with specificity where the information can be found." *Williams v. Sprint/United Management Co.*, 235 F.R.D. 494, 501 (D. Kan. 2006).

"In response to a request for production of documents, the requesting party is entitled to know which documents the responding party believes answer the request. It is not sufficient for a party to simply state the document is somewhere in the universe of documents produced." *Seabron v. American Family Mut. Ins. Co.*, 2012 WL 1090323, at *1 (D. Colo. 2012) (citing *Bayview Loan Servicing, LLC v. Boland*, 259 F.R.D. 516, 519 (D. Colo 2009).

BAD DISCOVERY OBJECTIONS

BOILERPLATE OBJECTIONS:

INTERROGATORY NO. 2: Identify the material facts and Documents that support your allegation that as of the date of your Complaint the Home was not substantially complete, work remained unfinished, or work needed repair, as alleged in Paragraph 18 of your Complaint. In responding to this interrogatory, please describe what you contend remained incomplete or unfinished, and what work needed repair.

Response: Plaintiff's demand letter, dated June 6, 2018, provides an extensive explanation of the work that was not substantially complete, unfinished, and needed repairing. In addition, Plaintiffs incorporate documents produced with their initial disclosures into this response. As the answer to this interrogatory may be found by inspecting the foregoing documents and communications, Plaintiff object that the burden of finding the answer to this interrogatory is substantially the same for both parties and according the interrogatory is improper.

"[A] Court will not permit defendants to shift the burden of discovery by telling 'plaintiff that, if he wishes, he may hunt through all the documents and find the information for himself.'" *Transportes Aereos de Angola v. Ronair, Inc.*, 104 F.R.D. 482, 500 (D. Del. 1985) (quoting *Kozlowski v. Sears, Roebuck & Co.*, 73 F.R.D. 73, 76 (D. Mass. 1976)).

("[A]n answer to an interrogatory should be complete in itself and should not refer to the pleadings, or to depositions or other documents. . . ." *Scaife v. Boenne*, 191 F.R.D. 590 (D. Ind. 2000).

OTHER MISTAKES

REQUEST FOR PRODUCTION NO. 1: Produce copies of all checks, wire or electronic transfer records, receipts, or other records showing payment of amounts due under contract that is the subject of this action.

Response : Responsive documents will be produced.

When? How will the documents be identified?

Technically, Rule 34 only requires a response to the discovery within 28 days. It does not actually require production of the documents. However, if you are not producing documents with your responses, you need to state when and how you will produce.

Also:

"Plaintiffs may not answer the interrogatory by generally referring Defendant to the documents produced . . . but rather must indicate with specificity where the information can be found." *Williams v. Sprint/United Management Co.*, 235 F.R.D. 494, 501 (D. Kan. 2006).

OTHER MISTAKES

A NOTE ON PRIVILEGE AND WORK PRODUCT:

Utah R. Civ. P. 26(b)(8)(A) requires a party claiming privilege to "make the claim expressly and . . . describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim."

"We emphasize that a proper privilege log must provide sufficient foundational information for each withheld *document* or *item* to allow an individualized assessment as to the applicability of the claimed privilege." *Allred v. Saunders*, 2014 UT 43, ¶ 27.

A "blanket claim" or "conclusory assertion" as to the applicability of a privilege is insufficient to preserve the privilege. *St. Paul Reinsurance Co., Ltd. v. Commercial Financial Corp.*, 197 F.R.D. 620, 640 (N.D. Iowa 2000).

The attorney-client and work product privileges protect **communications** and work product **documents**. The privileges do not protect underlying facts from disclosure. *See Snow, Christensen & Martineau v. Lindberg*, 2013 UT 15, ¶ 15 ("The attorney-client privilege protects communications, not facts."); *Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 230 (E.D.N.Y. 2007) ("Work product protection typically applies only to 'documents and tangible things,' and not to facts within the documents.")

BAD DISCOVERY OBJECTIONS

Ethics:

Utah R. Prof'l Cond. 3.4 Fairness to Opposing Counsel and Party

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; . . .

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

Utah Standards of Professionalism and Civility:

17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

19. In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

BAD DISCOVERY OBJECTIONS

If you have a problem with a particular discovery request, you must explain why. You cannot shift the burden to the other side to figure out what may or may not be wrong with their request.

If you respond "subject to and without waiving" an objection, it means you have decided not to respond in part. If you are answering the entirely of the request, drop the objection.

If you withhold information under an objection, you must say so with sufficient detail for the other side to evaluate your objection.

GOOD DISCOVERY RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1: Identify all communications and records of communications between Plaintiff and Defendant during the period of January 1, 2005, through the date of your response regarding the Business and/or the Real Property.

OBJECTION: Plaintiff objects to the foregoing interrogatory as overbroad, unduly burdensome, and exceeding the proportionality limitations of Utah R. Civ. P. 26(b)(2). A request for a description of "all communications" over a 13 year period regarding the Business and/or the Real Property does not describe the information sought with sufficient particularity to permit a response. In addition, the request as written would presumably require identification of face-to-face conversations and other verbal communications that occurred more than a decade ago. It is both impractical and unduly burdensome to demand a written recitation of such communications. Such information would be more easily and practically obtained through depositions.

RESPONSE: Subject to the foregoing objection, copies of all emails, text messages, and other written communications between the parties during the responsive period are produced herewith as PL 00074-00233. Plaintiff also produces as PL 000234-000370 telephone records showing the dates of calls to Defendant's telephone number.

GOOD DISCOVERY RESPONSES AND OBJECTIONS

REQUEST NO. 1: Please produce in native format all documents and communications supporting your claims in this action.

OBJECTION: Plaintiff objects to the foregoing request inasmuch as it fails to describe the information sought with sufficient particularity to permit a response.

RESPONSE: Documents which Plaintiff intends to offer in his case-in-chief have been produced with Plaintiff's initial disclosures (or supplements thereto) or are produced herewith. If there is a specific document that you are seeking, please identify the document with sufficient particularity to allow us to produce it. *See* Utah R. Civ. P. 34(b)(1).

GOOD DISCOVERY RESPONSES AND OBJECTIONS

REQUEST NO. 2: Please produce each and every document that tends to disprove any of Defendant(s)' claims and defenses which have not previously been produced in this litigation.

OBJECTION: Defendants object to the foregoing interrogatory inasmuch as a request for "each and every document that tends to disprove any of Defendant(s)' claims and defenses" is vague, ambiguous, and fails to describe the documents or things sought with sufficient particularity to permit a response. The request does not satisfy the "reasonably particularity" requirement of Utah R. Civ. P. 34(b)(1). In addition, the request impermissibly intrudes on attorney work product inasmuch as it would shift the burden to Defendants' counsel to analyze documents on behalf of Plaintiff.

RESPONSE: Defendants are not aware of any documents responsive to this request.

DISCOVERY DISPUTES

Rule 37. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.

(a) Statement of discovery issues.

(a)(1) A party or the person from whom discovery is sought may request that the judge enter an order regarding any discovery issue, including:

(a)(1)(A) failure to disclose under Rule 26;

(a)(1)(B) extraordinary discovery under Rule 26;

(a)(1)(C) a subpoena under Rule 45;

(a)(1)(D) protection from discovery; or

(a)(1)(E) compelling discovery from a party who fails to make full and complete discovery.

(a)(2) Statement of discovery issues length and content. The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order:

(a)(2)(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(a)(2)(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in person or **by telephone. . . .**;

(a)(2)(C) a statement regarding proportionality. . . .

DISCOVERY DISPUTES (cont.)

Rule 37 (cont.):

(a)(3) Objection length and content. No more than 7 days after the statement is filed, any other party may file an objection to the statement of discovery issues. The objection must be no more than 4 pages, not including permitted attachments, and must address the issues raised in the statement.

(a)(4) Permitted attachments. The party filing the statement must attach to the statement only a copy of the disclosure, request for discovery or the response at issue.

(a)(5) Proposed order. Each party must file a proposed order concurrently with its statement or objection.

(a)(6) Decision. Upon filing of the objection or expiration of the time to do so, either party may and the party filing the statement must file a Request to Submit for Decision under Rule 7(g). The court will promptly:

(a)(6)(A) decide the issues on the pleadings and papers;

(a)(6)(B) conduct a hearing by telephone conference or other electronic communication; or

(a)(6)(C) order additional briefing and establish a briefing schedule.

DISCOVERY DISPUTES (cont.)

REMEMBER:

Judges strongly dislike discovery disputes.

If you end up in front of the judge, make sure you can explain what you are seeking/explain your objections, and make sure your position is the more reasonable one.

Questions?

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