

# AVOIDING COMMON MISTAKES DURING DISCOVERY

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## SOUTH

The Discovery Commissioner continues to observe recurring mistakes made by counsel during the discovery process. These mistakes may cause delays in obtaining documents and the identification of witnesses necessary to the timely completion of discovery. Set forth below are 10 practice pointers to assist counsel in avoiding such mistakes.

### 1. Timely Disclose NRCP 16.1 Disclosures

There continue to be delays in disclosing initial 16.1 disclosures. The parties have up to 14 days after the Early Case Conference to exchange initial disclosures unless otherwise stipulated or ordered. Damages calculations and insurance information must be disclosed as initial disclosures. Insurance that “may” be liable to satisfy “part” or “all” of a judgment must be disclosed.

### 2. Do Not Attach Documents to the Joint/ Individual Case Conference Reports

*Do not* attach documents to Joint or Individual Case Conference Reports. Nevada Rule of Civil Procedure (NRCP) 16.1 specifically states that document and witness *lists* should be attached to the Case Conference Report – but the actual documents are not mentioned! See also NRCP 5(d). The Discovery Commissioner continues to sanction \$1 a page for improperly attaching documents to Case Conference Reports.

### 3. Do Not Forget to Conduct a 2.34 Conference

If an attorney has a discovery dispute, ensure that an Eighth Judicial District Court Rule (EDCR) 2.34 conference is conducted. A continued lack of compliance with EDCR 2.34 remains a significant problem. EDCR 2.34 requires a conference – attorney to attorney – to make an effort to resolve the discovery dispute before submitting a discovery motion. If opposing counsel does not respond to efforts to conduct an EDCR 2.34 conference, at a minimum, counsel should attempt two telephone calls and one letter and allow opposing counsel time to respond to these efforts. This history should be placed in the affidavit accompanying the discovery motion. The attorney making the effort to conduct the EDCR

2.34 conference or the attorney who actually conducted the EDCR 2.34 conference must prepare the affidavit. Discovery Commissioner Opinion No. 10 sets forth the requirements of a proper 2.34 conference and explains the language to be included in an affidavit.

#### **4. Do Not Forget All Five Discovery Deadlines**

When preparing either a Joint or Individual Case Conference Report, do not fail to include all *five* Discovery Deadlines: Close of Discovery; Last Day to Amend Pleadings and Add Parties (at least 90 days before close of discovery); Initial Expert Disclosure (at least 90 days before close of discovery); Rebuttal Expert Disclosure (no more than 30 days after the initial expert disclosure); and Last Day to File Dispositive Motions (no more than 30 days after close of discovery). If a discovery deadline is unnecessary, indicate “non-applicable” next to that deadline. Scheduling orders may be customized to the needs of any individual case as long as a rationale is provided. *Do not* place discovery deadlines on weekends or holidays.

#### **5. Do Not Forget to File a Joint Case Conference Report if There Is a De Novo From the Arbitration Program**

If a case has progressed through the arbitration program, the party requesting the *trial de novo* must file a Joint Case Conference Report within 60 days from the date of the *trial de novo*. The parties are not required to conduct an Early Case Conference. The case must also be removed from the short trial program by paying a \$1,000 fee before the Joint Case Conference Report is filed.

#### **6. Serve Subpoenas On All Parties**

Attorneys who issue subpoenas must also serve the subpoenas on all parties so that any party desiring to object to the subpoena may do so before documents are produced. The subpoena may include language that the

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records may be produced pursuant to the subpoena in lieu of attending either a deposition (if a notice of deposition is served contemporaneously with the subpoena) or appearing at the time and date noticed in the subpoena for producing the documents.

### **7. Videotaped Depositions Must Be Timely Noticed**

Parties desiring to conduct a videotaped deposition must include this in the deposition notice. Within five days of receiving a notice of deposition, any party may request that the deposition be videotaped if it has not been so noticed.

### **8. Timely Prepare and Submit a Report and Recommendation**

The Discovery Commissioner typically makes recommendations at the time of the discovery hearings. The

prevailing party will prepare a Report and Recommendation and submit it to the Discovery Commissioner for signature. Technically, a Report and Recommendation must be submitted within 10 days following the hearing. See EDCR 7.21. Counsel is also encouraged to review the minutes on Blackstone to ensure that the Report and Recommendation accurately reflects the outcome of the hearing. Delays in submitting reports and recommendations will delay the Discovery Commissioner's recommendations from becoming orders and may ultimately delay the discovery process.

### **9. Timely Move to Continue Discovery Deadlines**

There is an ongoing problem with attorneys moving to extend the discovery deadlines after the deadlines have expired. If the parties need to extend all of the discovery deadlines, the parties should submit an EDCR 2.35

Stipulation or file a Motion to Extend the Discovery Deadlines pursuant to EDCR 2.35 *at least 20 days before* the expiration of the *first* discovery deadline (typically the date for the last day to amend pleadings and add parties and initial expert disclosures).

#### **10. Do Not Forget to Timely Serve Discovery Motions**

There have been a number of recent occasions where a party has filed a critical discovery motion on an order shortening time and has failed to properly serve the motion, resulting in the Discovery Commissioner having to take the motion off calendar or continue it. Any motion filed on an order shortening time must be personally served, *and* one full judicial day's notice of the hearing is required (i.e., serving the motion one day before the hearing is insufficient). See EDCR 3.60. The requirements of EDCR 7.23 must be followed when submitting a motion on order shortening time in that the attorney requesting an expedited hearing must sign the order shortening time setting forth a valid reason as to why the motion cannot be heard in the ordinary course.

Attorneys are always encouraged to review the Rules of Civil Procedure and the Eighth Judicial District Court Rules to ensure compliance with the rules before filing a discovery motion or submitting an EDCR 2.35 Stipulation. Discovery forms are also available online at the Clark County website: [www.clarkcountycourts.us](http://www.clarkcountycourts.us). Finally, please ensure that the Discovery Commissioner receives file-stamped courtesy copies of all motions, oppositions and replies and that the date and time of the hearing are clearly set forth on the title page of the document. 

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