

Associates Capital Services v. Ponderosa Lawn Service,
Discovery Commissioner Opinion #4 (March, 1989)

TIMELY DISCOVERY

FINDINGS

This is a classic example of discovery failure. In a simple collection case the Plaintiff propounded interrogatories to the Defendant, requesting information concerning the Defendant's claims that the goods sold were defective and questioning other affirmative defenses. The interrogatories were served on September 21, 1988, and, when counsel for the Plaintiff had received no response by December, a letter was sent to defense counsel on December 16, 1988, requesting the answers by December 30, 1988, or a Motion to Compel would be brought. Counsel for the Plaintiff heard nothing from the Defendant until December 29, 1988, when a phone call from defense counsel advised that counsel may be withdrawing from the case and requesting no further action on the Motion to Compel until such motion was filed. When no Motion to Withdraw had been served upon the Plaintiff, a Motion To Compel was served on Defendant January 6, 1988, and set for hearing before the Discovery Commissioner on January 24, 1989. On January 23, 1989, the Answers to the Interrogatories were served upon the Plaintiff and Defendant did not appear at the hearing on January 24, 1989.

Discovery in a civil case must not wait upon the necessity of filing a Motion to Compel such discovery, thereby wasting the time and energy of diligent counsel, as well as the time of

the Court. Complying with a discovery request at the last possible moment makes a mockery of the procedure and will not be tolerated. Sanctions will become increasingly severe for counsel who ignore the rules.

IT IS HEREBY RECOMMENDED Defendant pay to Plaintiff the sum of \$250.00 in sanctions for failure to comply with the rules of discovery. Said sanction must be paid on or before February 17, 1989.