

Handling Discovery Conflicts in a Professional Manner

34th Medical Malpractice Liability Institute Seminar
Amelia Island, Novemeber,2018

In litigation we often refer to “the courtroom battle”; however, the discovery phase is where most of this battle takes place. It is where cases are won and lost.

When discovery takes a turn for the worst, and you are at the crossroads, do you give in to the emotion of the moment or be the adult in the room.

Ethical behavior is the minimum our profession demands; **professionalism** is what we should aspire to. So even though your client hired you to be a bulldog, you have an obligation to yourself and the profession to act above the fray.

1. SETTING THE TONE

1. SETTING THE TONE

2. DISCOVERY PLANS and SCHEDULING ORDERS

1. SETTING THE TONE
2. DISCOVERY PLANS and SCHEDULING ORDERS
3. **AVOID BOILERPLATE OBJECTIONS**

1. SETTING THE TONE
2. DISCOVERY PLANS and SCHEDULING ORDERS
3. AVOID BOILERPLATE OBJECTIONS
4. PHONE CONFERENCES

1. SETTING THE TONE
2. DISCOVERY PLANS and SCHEDULING ORDERS
3. AVOID BOILERPLATE OBJECTIONS
4. PHONE CONFERENCES
5. **GOOD FAITH LETTERS**

1. SETTING THE TONE
2. DISCOVERY PLANS and SCHEDULING ORDERS
3. AVOID BOILERPLATE OBJECTIONS
4. PHONE CONFERENCES
5. GOOD FAITH LETTERS
6. MOTION TO COMPEL

1. SETTING THE TONE
2. DISCOVERY PLANS and SCHEDULING ORDERS
3. AVOID BOILERPLATE OBJECTIONS
4. PHONE CONFERENCES
5. GOOD FAITH LETTERS
6. MOTION TO COMPEL
7. IN CAMERA INSPECTIONS

1. SETTING THE TONE
2. DISCOVERY PLANS and SCHEDULING ORDERS
3. AVOID BOILERPLATE OBJECTIONS
4. PHONE CONFERENCES
5. GOOD FAITH LETTERS
6. MOTION TO COMPEL
7. IN CAMERA INSPECTIONS
8. DEPOSITIONS

All of these steps provide you with opportunities to document the events. Documentation is your best friend. It outlines how opposing counsel or parties have misbehaved, without necessitating an emotional or irrational response from you. Additionally it provides the court a timeline of occurrences and can be used to justify sanctions and/or attorneys fees.

One reason “a man who is his own attorney has a fool for a client,” is because it is too difficult for a party not to be emotional and irrational. Besides being hired for your expertise, you are being hired to be **PROFESSIONAL.**

A LAWYER'S CREED

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.