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Adding Value as a Junior Attorney in the Discovery Process

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While the discovery process can be difficult, time-consuming and expensive, there are a few key things you can do as a junior attorney to help streamline the process and minimize the burden on your client, the court and your team. As we know, cases are often won, lost, or settled on the strength of positions developed and revealed through discovery—that is what makes discovery so important … and dare I say, exciting! While more senior litigators may oversee the discovery process, it is often the junior attorneys who receive the opportunity to execute the day-to-day strategy. With a little foresight, junior attorneys can minimize the potential chaos and maximize the strategic value they bring to a case by: planning ahead; considering the forum; knowing the rules; and cooperating in discovery with opposing counsel, as necessary.

Plan Ahead

Developing your discovery plan early is one of the most important ways you can add strategic value in your case. To develop your discovery plan, one should review any pleadings and talk to the team to ensure that you understand the issues in the case and your client's goals at the outset. You should also understand what types of documents your client has in its possession, custody or control. Many cases do not require expensive full-scale document production with millions of pages of paper and electronic documents. Such

collection and production may be burdensome for the client and may not be required in the case. Once you understand the client's goals, the general scope of the issues, and the client's own document collection capabilities, you will be in a better position to negotiate a case schedule and reach appropriate agreement on the scope of discovery with opposing counsel. Failure to reach agreements up front can lead to a lot of headaches and unnecessary disputes down the road.

Consider the Forum

The scope of discovery and strategy will depend, in part, on the forum for the case. For instance, if alternative dispute resolution is required or an option the client wishes to explore tor, this could significantly impact the discovery plan. Discovery in such a forum may involve informal exchanges of information without the burden of strict adherence to civil and evidentiary rules. Simple form interrogatories, declarations, and affidavits, instead of depositions, may suffice. Under that format, you may be able to focus discovery and reduce the cost and expense as well as any potential discovery disputes that would otherwise relate to formal discovery.

On the other hand, if alternative dispute resolution does not result in a settlement, proper planning early in the case through communication with the team and client should allow one to pivot your discovery strategy toward obtaining admissible evidence that is verified, authenticated, and ready for use under oath in formal motions, such as summary judgment, or trial. Certain discovery devices, such as requests for admission and deposition testimony, lend themselves to formalized motion and trial practice.

Moreover, if the case is proceeding with formal discovery, litigators should anticipate a potential appeal from either a win or a loss at trial. Considering what is and is not appealable should inform decisions on which information to pursue to ensure you have a fully developed record for appeal. Don't be that lawyer who overlooks the fundamental rule of appellate procedure: "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." See Pa. R. A. P. 302(a).

Know the Rules

Read up on the local, state, federal, and international rules to ensure that we comply, and importantly, that our adversary is complying as well. This all seems obvious, but, in at least one case, when a party noticed for deposition a European affiliate of a party, it was realized just before the deposition, that the deposition and any information exchanged might be barred by the European Union's (EU) General Data Protection Regulation (GDPR). The GDPR expressly "imposes obligations onto organizations anywhere, so long as they target or collect data related to people in the EU." Those who violate its privacy and security standards may be subject to expensive fines, reaching into the tens of millions of euros. GDPR posed a significant threat to discovery in the case. The lesson here remains—it always helps to know the rules.

Cooperate With Opposing Counsel

We all know attorneys who use discovery as a weapon—those who file meritless objections, request responses to hundreds of multi-party interrogatories and notice for deposition everyone under the sun. Rather than treating the case management order as a mere formality, try collaborating with opposing counsel to assemble a reasonable case management order. Rather than nitpick every issue, set out basic information that both sides recognize as material to the dispute and agree should be produced; and do so in a manner prearranged by the parties. Doing these things allows the parties to focus on the issues and information in contention, minimizes discovery disputes and the burden on the court; and it provides greater service to your client.

Discovery can be unpredictable, but with a few practical approaches, you can help reduce the chaos and minimize the burden on the client, the court and your team. By developing a plan early in the case, knowing the applicable rules and using that knowledge to anticipate potential hiccups, and collaborating with opposing counsel to reach agreements on the scope of discovery up front, a junior litigator can be well-equipped to handle challenging discovery issues that may arise. Lastly, the ability to plan and develop an effective discovery strategy comes from experience; so check in with your mentors and more seasoned practitioners for advice regularly, as well as whenever you are in doubt or your instinct suggests you do so.

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