

Bullet-Point Update: Electronic and Federal Court Discovery Issues for the Week of July 31, 2017

CYBERSECURITY AND PRIVACY | LITIGATION AND TRIALS | TECHNOLOGY | AUGUST 21, 2017



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Expert Witnesses

Use this when the other side tries to dig up dirt on your expert. *Collett v. GEICO Cas. Co.*, 2017 WL 3336614 (E.D. La. Aug. 3, 2017) (denying motion to compel expert witness to testify about fraud allegations that had been made against him seven years earlier)

Sanctions

Congratulations to long-time client STGC for obtaining terminating sanctions because they behaved properly in discovery. *Stewart Title Guaranty Co. v. 2485 Calle Del Oro, LLC*, 2017 WL 3381814 (S.D. Cal. Aug. 7, 2017) (imposing terminating sanctions, criminal contempt, and bar reporting for bad faith refusal to give any discovery despite reassurances apparently used for the purpose of delay)

Corporate Representative Depositions

Use this when the other side sends you an unprepared deponent. *Evanston Ins. Co. v. Dimeda Instrumente GMBH*, 2017 WL 3394112 (S.D. Fla. Aug. 7, 2017) (requiring new corporate representative deposition where witness was not adequately prepared, but declining to require specific person most knowledgeable to be designated as the witness)

Spoliation

Use this to defend negligent or good faith routine business practice destruction of evidence. *Hefter Impact Technologies, LLC v. Sport Mask, Inc.*, 2017 WL 3317413 (D. Mass. Aug. 3, 2017) (declining to award sanctions other than fees for the motion, despite deletion of old emails, wiping of a hard drive and negligent trashing of notebooks)

Use this when the other side allows key evidence to disappear. *EEOC v. JBS USA, LLC*, 2017 WL 3334648 (D. Col. Aug. 4, 2017) (precluding defendant's evidence that prayer breaks caused production delays as a sanction for failure to preserve records of delays)

Boilerplate

"None of your one-word answers here!" says former Carlton Fielder, Magistrate Mac McCoy. *Clark v. Hercules*, 2017 WL 3316311 (M.D. Fla. Aug. 3, 2017) (granting motion to compel better answers where plaintiff responded to a "state the basis for your contention" interrogatory with the one-word answer: "fact")

Use this to force the other side to do some investigation. *Turk v. Somerville County Hospital Dist.*, 2017 WL 3392786 (W.D. Tex. Aug. 7, 2017) (boilerplate burdensomeness objection overruled where defendant had to interview 20 employees to find out whether any of them referred to a co-worker as "camel toe")

Use this to defend yourself when your objections had to be a bit repetitive. *Quinonez-Castellanos v. Performance Contractors, Inc.*, 2017 WL 3430511 (N.D. Iowa Aug. 9, 2017) (declining to compel better discovery responses where they were tailored and specific objections that were repetitive only because the requests themselves were repetitive)

Discovery Costs

Use this to whittle away at the other side's fee award. *Johnson v. Swanson*, 2017 WL 3438735 (E.D. Cal. Aug. 9, 2017) (allowing only .5, rather than 3.1 hours of recoverable fees for drafting boilerplate discovery)

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