(Rev 3/17)

ROBERT H. CLELAND
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DISCOVERY PRACTICES AND EXPECTATIONS

GENERALLY. The court expects parties and counsel to conduct discovery in a professionally cooperative way that is consistent with Fed. R. Civ. P. 1: "To secure the just, speedy, and inexpensive determination of every action and proceeding."

RESOLVING ISSUES. Counsel are expected to communicate early and effectively in dealing with discovery problems. If a problem cannot be resolved by counsel, the court should be alerted. Motions may be needed at times, but the court will also be available to conduct an informal discovery conference, either in person or by telephone. To arrange for such a conference, call the court's Case Manager, Lisa Wagner, at (810) 984-3290.

DEPOSITIONS. Counsel will be respectful of the witness, confine questions to subjects that are discoverable under Fed. R. Civ. P. 26(b), and spend no more time than is reasonably needed in questioning the witness. Attorneys are expected to be civil, polite and professional. The court may view incivility or similar behavior during a deposition as indicating that legitimate examination is being obstructed, or that illegitimate examination is being undertaken in bad faith to annoy, embarrass, or oppress. Misbehavior by either side may be interpreted as failure to cooperate in discovery and is sanctionable under Fed. R. Civ. P. 37(b)(2)(A)(i)–(vii). *See generally Graves v. Standard Ins. Co.,* No. 3:14-CV-558-DJH, 2016 WL 3512032, at *3-6 (W.D. Ky. June 16, 2016).

Counsel for the deponent may not impede the legitimate interrogation of the

witness, and will refrain from directing the deponent not to answer any question except based upon privilege under Fed. R. Civ. P. 30(c)(2). Counsel will refrain from offering gratuitous comments or directing the deponent as to times, dates, documents, testimony, and the like. *See Kelvey v. Coughlin*, 625 A.2d 775, 777 (R.I. 1993) (construing federal civil procedure law). Objections other than as to form or dealing with privilege are preserved for trial. Objections are expected to be few in number and, more importantly, will not be "speaking objections" apparently calculated to suggest an answer to the witness or impede legitimate questions.

Obvious instruction to the witness may justify remedial action such as a cautionary instruction to the jury or limiting the scope of allowable testimony. Fed. R. Civ. P. 37(b)(2)(A)(i)–(vii).

Counsel should state any objection for the record simply, followed by a word or two describing the legal basis for the objection.

Counsel will refrain from engaging in extraneous dialogue on the record during the course of the deposition. By agreement, a recess may be taken out of the hearing of the deponent if needed.

No deposition may last more than seven hours (exclusive of breaks), except by leave of the court or stipulation of the parties. Fed. R. Civ. P. 30(d)(1).

If problems arise in a deposition and counsel need immediate guidance from the court, you may call chambers.

DOCUMENTS. Document requests and interrogatories should be reasonable in scope. Responses should be complete and responsive. The court expects that no multi-page listing of "definitions" preceding interrogatories is required if the interrogatories are intelligently phrased and honestly answered. If there are doubts as to definitions or

scope, they should be raised promptly with the requesting party. Documents withheld on the basis of privilege must be listed on a privilege log with sufficient information to enable the requesting party to understand the nature of the documents and the basis of the privilege claim. Fed. R. Civ. P. 26(b)(5).