

### III.A | PREPARATION AND INTERPRETATION OF REQUESTS FOR DOCUMENTS

1 - Formulating Requests for Documents. In addition to complying with the provisions of Rules 34 and 45, Federal Rules of Civil Procedure, a request for documents, whether a request for production or a subpoena duces tecum, should be clear, concise, and reasonably particularized. For example, a request for "each and every document supporting your claim" or a request for "the documents you believe support Count I" is objectionably broad in most cases.

2 - Use of Form Requests. An attorney shall review any standard form document request or subpoena duces tecum and modify it to apply to the facts and contentions of the particular case. A "boilerplate" request or subpoena not directed to the facts of the particular case shall not be used. Neither should burdensome "boilerplate" definitions or instructions be used in formulating a document request or subpoena. Words used in discovery normally should carry their plain and ordinary meaning unless the particular case requires a special or technical definition, which should be specified plainly and concisely by the party required to respond to the term(s).

3 - Reading and Interpreting Requests for Documents. An attorney receiving a request for documents or a subpoena duces tecum shall reasonably and naturally interpret it, recognizing that the attorney serving it generally does not have specific knowledge of the documents sought and that the attorney receiving the request or subpoena generally has or can obtain pertinent knowledge from the client. Furthermore, attorneys are reminded that evasive or incomplete disclosures, answers, or responses may be sanctionable under the provisions of Rule 37, Federal Rules of Civil Procedure.

4 - Contact With the Client When a Document Request Is Received. Upon receiving a document request, counsel should promptly confer with the client and take reasonable steps to ensure that the client (i) understands what documents are requested, (ii) has adopted a reasonable plan to obtain documents in a timely and reasonable manner, and (iii) is purposefully implementing that plan in good faith.

5 - Responding to a Document Request. A party and counsel ordinarily have complied with the duty to respond to a document request if they have:

- (a) Responded to the requests within the time set by the governing rule, stipulation, or court-ordered extension;
- (b) Objected with specificity to objectionable requests;
- (c) Produced the documents themselves (or copies), specifically identified those documents that are being or will be produced, or specified precisely where the documents can be found and when they can be reviewed; if the documents will be produced, the response should state a specific date when the responsive documents will be available. For example, to state that the requested documents will be available at an ambiguous "mutually agreeable time" is not sufficient.
- (d) Stated specifically that no responsive documents have been found; and
- (e) Ensured a reasonable inquiry with those persons and a reasonable search of those places likely to result in the discovery of responsive documents.

6 - Objections. Attorneys should not make objections solely to avoid producing documents that are relevant to the case or that are otherwise necessary to discover or understand those the issues. Absent compelling circumstances, failure to assert an objection to a request for production within the time allowed for responding constitutes a waiver and will preclude a party from asserting the objection in response to a motion to compel. Objections to requests for production should be specific, not generalized, and should be in compliance with the provisions of Rule 34(b), Federal Rules of Civil Procedure. Objections to portions of a document request do not excuse the responding party from producing those documents to which there is no objection. Specific objections should be matched to specific requests. General or blanket objections should be used only when they apply to every request. Boilerplate objections such as "the request is overly broad, unduly burdensome, and outside the scope of permissible discovery" are insufficient without a full, fair explanation particular to the facts of the case.

7 - Producing Documents Subject to Objection. When the scope of the document production is narrowed by one or more objections, this fact and the nature of the documents withheld should be asserted explicitly for that request.

8 - When Production Is Limited by Interpretation. If a party objects to a request as overbroad when a narrower version of the request would not be objectionable, the documents responsive to the narrower version ordinarily should be produced without waiting for a resolution of the dispute over the scope of the request. When production is limited by a party's objection, the producing party should clearly describe the limitation in its response.

9 - Supplementation of Document Production. A party should, without having to be asked, promptly produce any responsive documents discovered after the original production.

10 - Producing Business Records in Lieu of Answering Interrogatories. Rule 33(d), Federal Rules of Civil Procedure, allows a party in very limited circumstances to produce business records in lieu of answering interrogatories. To avoid abuses of Rule 33(d), the party wishing to respond to interrogatories in the manner contemplated by Rule 33(d) should observe the following practice:

(a) Specify the documents to be produced in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

(b) The producing party shall make its records available in a reasonable manner [i.e., with tables, chairs, lighting, air conditioning or heat, and the like if possible] during normal business hours, or, in lieu of agreement, from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

(c) The producing party shall designate one of its regular employees to instruct the interrogating party on the use of the records retention system involved. That person shall be one who is fully familiar with the records system and, if a question concerning the records arises and the designated person cannot answer, the producing party should act reasonably and cooperatively in locating someone who knows the answer to the question.

(d) The producing party shall make available any computerized information or summaries that it either possesses or can produce by a reasonably efficient procedure. See, Section VII on E-Discovery.

(e) The producing party shall provide any relevant compilations, abstracts, or summaries, either in its custody or reasonably obtainable by it, not prepared in anticipation of litigation. If it has any documents arguably subject to this clause but which it declines to produce for some reason, the producing party shall call the circumstances to the attention of the opposing party, who may move to compel.

(f) All of the actual clerical data extraction work shall be performed by the interrogating party unless agreed to the contrary, or unless, after actually beginning the effort, it appears that the task could be performed more efficiently by the producing party. In that event, the interrogating party may ask the Court to review the propriety of the Rule 33(d) election. In other words, it behooves the producing party to make the document search as simple as possible, or the producing party may be required to answer the interrogatory in full.

11 - Oral Requests for Production of Documents. As a practical matter, many attorneys produce or exchange documents upon informal request, often confirmed by letter. An attorney's promise that documents will be produced should be honored. Requests for production of documents and responses may be made on the record at depositions but usually should be confirmed in writing to avoid uncertainty. Attorneys are reminded that informal requests may not support a motion to compel.