

# REFINING YOUR DISCOVERY TACTICS: A PLAINTIFF PERSPECTIVE

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# LITIGATION TOOLS

- Pre-Suit Investigation
- Rule 26(f) conference
- Initial Disclosures
- Written Discovery
  - Interrogatories, Request for Production of Documents, Subpoenas, Requests for Admission
- Depositions

# Pre-Suit Investigation

- Most important for the Plaintiff
- Make More Money with the cases turned down
- Investigate everything
  - Client, company, harasser, witnesses

# Investigate the Company

- Research the company assets
  - Hoovers, Dun and Bradstreet reports
  - If public, get SEC filings
    - Gives information on earnings, number of employees, litigation history
- Read the company website
  - Wealth of information, including the corporate structure, important people, number of employees

# Investigate the Company

- Research any prior lawsuits against the company
  - Look on Pacer for federal cases
  - Check their place of business/ registered agents
    - Contact prior attorneys and get case files
- Contact the company for a reference for the client
  - May combat mitigation defense

# Investigate the Company

- Send letter to company requesting insurance coverage pursuant to O.C.G.A. 33-3-28
- Preserve spoliation defense by requesting that they maintain computer files, including internet and e-mail usage

# Investigate the Harasser

- Order a criminal history of harasser from GCIC for felony convictions
- Check for litigation history on Pacer and places the harasser has lived
- Check litigation for any prior places of harasser's employment
- Call any prior employers for reference for harasser

# Investigate the Client

- Client Questionnaire
  - Ask all the questions they ask in discovery
  - Include work, medical, psychological, criminal, litigation, prior addresses, education, banking, credit, education
  - Ask about their internet and email usage
  - Ask about confidential documents taken
  - Ask about the witnesses



# Investigate the Client

- Order all the medical records
- Order the client's criminal history from GCIC
- Contact prior employers and verify employment dates and references
- Order all prior litigation files
- Order a copy of the credit report

# Client Instructions

- Keep copies of newspaper advertisements that the client has responded to in seeking employment
- Keep copies of letters of inquiry
- Keep records of any interviews or job offers
- Keep records of employment agency registrations

# Further Investigation

- Send a request for the EEOC file
- Contact all witnesses that are either former management of the company, or are current employees and not represented by the employer's attorney
- Get affidavits, where helpful
- Start drafting the summary judgment response

# Focus Groups

- What is a focus group?
- How do they help my case?
- Why use them before discovery starts?
- Should I use them throughout discovery?

# Rule 26(f) Conference

- Call and set up in person Rule 26(f) meeting when you receive the Answer
- Read the rule:
  - The parties shall meet to discuss the nature and basis of their claims and defenses, and the possibilities for a prompt settlement or resolution of the case, and to develop a proposed discovery plan

# Rule 26(f) Conference

- Set the Agenda by bringing a written agenda
  - Outline the Proposed Scheduling Order
  - List all the Defenses which you want to know the basis
  - Protective Orders
  - Give proposed dates for depositions
  - Serve written discovery requests

# Written Discovery

- Initial Disclosures
- Requests for Admissions
- Interrogatories
- Request for Production of Documents
- Subpoenas
  - Formulated and goal oriented
  - Use focus group information

# Initial Disclosures

- Witness information
  - Names, address and telephone number
  - Likely to have discoverable information to support defenses
- All documents, data compilations, tangible things that you may use to support defense
- Insurance agreements



# Initial Disclosures

- Upon receiving the initial disclosures, contact the attorney and request that they supplement the information so that it is complete
- Provide a deadline for compliance
- Follow up with a letter confirming the conversation
- File a Motion to compel, if necessary

# Requests for Admission

- Use to admit or deny specific relevant facts and the genuineness of documents
- Use in beginning of discovery to limit defenses
- Use after discovery starts to verify whether material facts that are not or cannot reasonably be disputed
- If proven, the requesting party may be entitled to attorneys fees

# Written Interrogatories

- Useful and inexpensive for certain information
  - Name, address and phone numbers of individuals
  - Identify prior complaints, comparators
  - Identify statistical information
  - Identify individuals involved in investigations

# Written Interrogatories

- Benefits and salary information
  - Computer data and how stored, retrieved, read and what segments are obtainable
  - Number of employees
  - Net worth and assets of company
- Contention Interrogatories

# Requests for Production of Documents

- Useful and inexpensive
- The Defendant has most of the documents
- Computer data
- Records of hiring
- Personnel files
- Benefits data
- Organizational charts
- Written company policies

# Subpoenas

- In harassment cases, all previous employers of the harasser
- All subsequent employers
- Full criminal history, including arrests
- Any information that the focus group wants
- Any information that the defendant requests

# Good Faith Conferences

- Contact defense counsel upon receipt of discovery responses
- Set up IN PERSON good faith conference
- Ask for the basis of each objection
- Ask what information is withheld
- Pursue all information you requested that you have a proper foundation for requesting

# Good Faith Conferences

- Set a deadline for the agreed upon discovery
- Follow up with a letter outlining the agreement
- If responses are not timely updated, immediately contact defense attorney
- File motions to compel



# Conclusion

- Investigate your case
- Know your case better than the defense
- Stay one step ahead
- Tailor your discovery to the case
- Follow up constantly
- Draft and update the summary judgment response