

The Family Lawyer's
Discovery Tool Kit

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"Anything you want, you got it!

"Anything you need, you got it!

"Anything at all, you got it!...

....Baaaaay-bay!"

"You Got It", Roy Orbison.

Fundamental Guidelines of Discoverabililty

- Is it relevant?
- Is it privileged?
- If not, it's discoverable.

Formal Discovery Tools

- Bill of Particulars
- Written Interrogatories
- Depositions
- Request for Production of Documents

More Formal Discovery Tools

- Requests for Entry Upon Property
- Physical and Mental Examination of Persons
- Requests for Admission
- Notice to Attend and Produce

Informal Discovery Tools

- Your Client!
- Parties' Friends and Family
- The Internet
- Private Investigators

“I’ll tell you what I want...

...what I really, really want!”

“Wannabe”, The Spice Girls.

More Informal Discovery Tools

- Electronic Surveillance, i.e., Wiretaps, GPS, Bugs, etc.
- Public Records
- Credit Reports
- Authorizations

Yet More Informal Discovery Tools

- Four-Way Meetings
- Third-Party Interviews
- Letter Requests
- Over-the-Counter DNA Tests

One Last Informal Tool

- Expert for Review or Rebuttal Only

Complex Discovery Issues

- Third Party Discovery
 - Who?
 - What?
 - When?
 - How?

“OO! What you want...
OO! Baby, I got it.
OO! What you need...
OO! Don’t you know I got it.

OO! All I’m askin’ for, is just a little...RESPECT!”

“Respect”, Otis Reading, but
read this with Aretha singing in your head.

Privilege Based in Confidential Communications

- Confidential communications to attorney
- Confidential communications to clergymen
- Confidential communications to psychiatrist or licensed psychologist
- Confidential communications to school personnel
- Confidential communications to "qualified professionals"
- Confidential mediation communications and documents

Work-Product Privilege

A party may obtain information prepared in anticipation of litigation except for "disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes or summaries, legal research or legal theories."

Pa. R.C.P. 4003.3

Strategies?

Discovery Abuses

- Using a method or conducting in a manner which causes unwarranted annoyance, embarrassment, oppression or undue burden and expense.
- Persistent attempts, without justification, to obtain information outside the scope of discovery, i.e., not relevant or privileged.

Discovery Abuses

- Failing to comply with formal discovery procedures.
- Failing to respond or submit to an authorized discovery method.
- Evasive discovery responses.
- Contempt of an order to provide discovery.

Protective Orders

- “Unreasonable annoyance, embarrassment, oppression, burden or expense” Pa. R.C.P. 4012.
- “Bad faith” Pa. R.C.P. 4011.
- “Unreasonable investigation by deponent, party or witness” Pa. R.C.P. 4011.

Motions to Compel

- Same considerations as Motions for Protective Orders?

Motions for Sanctions

- Factors for consideration:
 - Degree of prejudice and curability of any prejudice;
 - Bad faith in failing to comply;
 - Number of violations; and
 - Importance of precluded evidence.

Jacobs v. Jacobs, 884 A.2d 301 (Pa. Super. 2005).

“You can’t always get what you want.

“No, you can’t always get what you want.

“But if you try sometimes...you just might find,

YOU GET WHAT YOU NEED.”

“You Can’t Always Get What You Want”, The Rolling Stones.

Types of Sanctions

1. "Admission" Sanctions – Pa. R.C.P. 4019(c)(1).
2. Legal Fees and Costs – Pa R.C.P. 4019(d), (e), (f), and (g)(1)-(3).
3. Evidence Preclusion – Pa. R.C.P. 4019(c)(2) and (i).
4. Issue or Claim Preclusion – Pa. R.C.P. 4019(c)(3).
5. Stay of Proceedings – Pa. R.C.P. 4019(c)(3).
6. Contempt Sanctions – Pa. R.C.P. 4019(c)(4).
7. "Equitable" Sanctions – Pa. R.C.P. 4019(c)(5).

"And I still...

...haven't found...

...what I'm looking for."

"Still Haven't Found What I'm Looking For", U2.
