Representing Your Client in Federal Court

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Is Federal Court the Right Court? Jurisdiction, Venue and Local Court Procedure

I. CHANGES TO THE FEDERAL JURISDICTION AND VENUE STATUES

Congress amended the removal statutes in the Federal Courts Jurisdiction and Venue Clarification Act of 2011. The Act significantly modified the removal and venue procedures, including those in the following situations:

(1) *When there are multiple defendants* – Prior to the Act, courts were divided on whether a defendant who was served after another defendant has 30 days to remove from the date it was served or from the date the first defendant was served. Now, 28 U.S.C. § 1446(b)(2)(B) provides ***each*** defendant in a multiple defendant case has 30 days after it receives the initial pleading to file a notice of removal. The deadline is triggered by both the actual receipt of the summons or the complaint and the existence of jurisdictional facts on the face of the initial pleading.

(2) *When removal is sought after one year and the plaintiff acted in bad faith* – Where the case is not initially removable but later becomes so because the plaintiff amends the complaint or brings about a change make the suit removable, the defendant has one year from commencement of the suit under 28 U.S.C. ¶ 1446(c)(1) to file a notice of removal. The Act amended the statute to add an exception to the one-year limit where the court finds the plaintiff acted in bad faith to prevent the defendant from removing the action. A finding that the plaintiff deliberately failed to disclose the real amount in controversy to prevent removal is considered bad faith.

(3) *When the amount in controversy is not specified in the Complaint* – The Act amended removal procedures to allow the defendant to specify the amount in controversy in the notice of removal when it is not specified in the complaint. The defendant

must establish by a preponderance of the evidence that the amount in controversy exceeds $75,000. 28 U.S.C. § 1446(c)(2)(b),(3)(A).[1]

(4) *Consent to removal* – Before the Act, the statute was not clear on whether all defendants, including those not properly served, had to consent to removal to federal court. Now, 28 U.S.C. § 1446(b)(2)(A) provides all "defendants who have been properly joined and served must join in or consent to removal."

(5) *When federal claims are joined with non-removable claims* – The Act made clear that in cases where there are federal question claims and non-removable claims, only the defendants against whom the federal question is asserted are required to join in the notice of removal or consent to the removal.

(6) *Consent to transferring venue* – The Act made changes to allow a court to transfer venue to a court agreed upon by the parties, even where the court would not otherwise have been a proper venue. The parties may file a stipulated motion to transfer under 28 U.S.C. § 1404(a).

The act applies to all actions filed on or after January 6, 2012. Use caution in citing removal cases decided before 2012.

II. Determining Jurisdiction and Venue

A. Personal Jurisdiction

A court must have personal jurisdiction over a defendant or the case may be dismissed pursuant to Fed.R.Civ.P. 12(b). A plaintiff need make only a prima facie showing of jurisdictional facts through submitted materials to defeat a defendant's motion to dismiss. *Data Disc, Inc. v. Sys. Tech. Associates, Inc.*, 557 F.2d 1280, 1285-86 (9th Cir. 1977). Any uncontroverted allegations in the complaint must be taken as true, and conflicts between the facts contained in the parties' affidavits must be resolved in favor of the plaintiff. *Action Embroidery Corp. v. A. Embroidery, Inc.*, 368 F.3d 1174, 1177 (9th Cir. 2004). If the Court determines it necessary to resolve controverted factual issues, it may hold an evidentiary hearing to determine whether personal jurisdiction is appropriate over the defendants. *Id*. See also, *Data Disc*, 557 F.2d at 1285.

The assertion of personal jurisdiction must comply with the requirements of Montana law, and must not offend due process. *Decker Coal Co. v. Cmmw. Edison Co.*, 805 F.2d 834, 838

[1] The U.S. Supreme Court held a defendant's notice of removal needs to include only a plausible allegation that the amount in controversy exceeds the jurisdictional amount and evidence is required only when the plaintiff contests it or the court questions it. *Dart Cherokee Basin Operating Co., LLC v. Owen*s, 135 S.Ct. 547 (2014).

(9th Cir. 1986). Montana's long-arm statute outlines the requirements for general and specific jurisdiction. M. R. Civ. P. 4B(1)(a)(b)(e).

The first sentence of Rule 4B(1), M.R.Civ.P., states the requirements for general jurisdiction and the remainder of Rule 4B(1), M.R.Civ.P., states the requirements for specific long-arm jurisdiction. *Cimmaron Corp. v. Smith*, 67 P.3d 258, ¶ 11 (Mont. 2003). For the purposes of general jurisdiction, a party is "found within" the state if he or she is physically present in the state or if his or her contacts with the state are so pervasive that he or she may be deemed to be physically present there. *Simmons Oil Corp. v. Holly Corp.*, 796 P.2d 189, 194 (Mont. 1990). The Ninth Circuit has set out a three-part test for determining whether specific personal jurisdiction may be exercised:

(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) [t]he claim must be one which arises out of or results from the defendant's forum-related activities; [and] (3) [e]xercise of jurisdiction must be reasonable. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9th Cir.1995) (quoting *Data Disc*, 557 F.2d at 1287). "[U]pon a showing that the defendant purposefully directed his activities at forum residents," a rebuttable presumption arises that exercise of jurisdiction is reasonable. *Id*. At that point, defendant bears the burden to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Id*.

- ✓ ***Plead facts in the complaint that establish general or specific personal jurisdiction;***
- ✓ ***If you're representing the defendant, consider whether personal jurisdiction has been sufficiently pled;***
- ✓ ***Do not waive your right to challenge personal jurisdiction. If a defendant does not file a Rule 12(b)(2) motion to dismiss in its first responsive pleading or its first responsive pleading allowed as a matter of course, the defense is waived.***
- ✓ ***If you're representing the plaintiff and are faced with a Rule 12(b)(2) motion to dismiss, consider whether amending your complaint to establish jurisdictional facts is appropriate.***

B. SUBJECT MATTER JURISDICTION

The court must have subject matter jurisdiction to hear the case. A defendant can challenge the federal court's subject matter jurisdiction with a Rule 12(b)(1) motion to dismiss. Lack of subject matter jurisdiction is a defense that is never waived.

Federal courts may have subject matter jurisdiction based upon a federal question (28 U.S.C. § 1331)). If the complaint contains a claim made under a federal statute or is based on federal constitutional law, the court has federal question jurisdiction. If the complaint contains

federal claims and non-federal claims, the court may have supplemental jurisdiction over the other claims. 28 U.S.C § 1367.

Federal courts also have subject matter jurisdiction over claims between parties of complete diversity (no defendant is a citizen of the same state as any plaintiff) in matters where the controversy exceeds $75,000. 28 U.S.C. 1332.

In a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, a party may challenge the federal question or diversity jurisdiction, but may also challenge jurisdiction on the basis of mootness or supplemental jurisdiction, among other things.

C. VENUE

If a defendant contends the district in which the lawsuit was filed is an improper venue, it can challenge the venue with a Rule 12(b)(3) motion for change of venue.

Pursuant to Local Rule 3.2(c), a party's motion for change of venue within the U.S. District Court must be filed with its first appearance. Issues about venue are resolved under federal law, even in cases based on diversity jurisdiction. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir. 1988).

III. REMOVAL

A notice of removal allows a defendant to effectuate a removal of the lawsuit from state court to U.S. District Court. Fed.R.Civ.P. 81. Any case can be removed, but the case will be remanded to state court and costs assessed against the removing party for improper removal. For removal to be effective, the following conditions must be met:

- ✓ ***There must be jurisdiction grounds (diversity or federal question) to support the removal;***
- ✓ ***The notice of removal must be made within 30 days after receiving notice of the suit;***
- ✓ ***All properly served co-defendants must consent to removal; and***
- ✓ ***If case became removable after the initial pleading was filed, the notice must not be more than one year from commencement of the action (except when plaintiff acts in bad faith to avoid removal).***

IV. LOCAL RULES AND PROCEDURES, FORMS AND DEADLINES

In addition to the Federal Rules of Civil Procedure, the U.S. District Court for the District of Montana maintains its own Local Rules. The Local Rules are available on the court's web site. Always check to be sure you have the most recent version of the Local Rules. The following are some important areas of the Local Rules to keep in mind:

- ✓ ***You must confer with the opposing party prior to filing a motion. L.R. 7.1(c);***
- ✓ ***Briefs have certain word limits and require a certificate of compliance with the particular limit. L.R. 7.1(d)(2);***
- ✓ ***Any brief over 4000 words must include a table of contents, a table of authorities and exhibit index. L.R. 7.1(d)(2);***
- ✓ ***Discovery motions must have been conferred upon and attempts made to resolve the issue without the court's involvement or the motion will be summarily denied. L.R. 26(c)(1);***
- ✓ ***Summary judgment motions require a separate statement of undisputed facts. A statement of disputed facts must be filed in opposition to the motion. L.R. 56.1;***
- ✓ ***Federal courts are serious about the deadlines. Fed.R.Civ.P. 16(a) requires a showing of "good cause" to amend the scheduling order; L.R. 16.3(b)(1) provides continuances will not be granted absent "extraordinary circumstances;" and many U.S. District Court scheduling orders containing the following directive, "motions for extension of the schedule will not be granted absent compelling reasons."***
- ✓ ***A preliminary pretrial statement, statement of stipulated facts, joint discovery plan and initial disclosures are required at the outset of the case. L.R. 16.2(b);***
- ✓ ***Be aware of the rules set forth in the court's preliminary pretrial order and scheduling order.***

V. IMPACT OF PLAYING THE FIELD

Federal court differs from state court in many respects. Some factors to consider when choosing federal court include:

- ✓ ***The federal court jury is drawn from a wider pool. The Montana divisions are: Billings, Butte, Great Falls, Missoula and Helena.***
- ✓ ***The chance of local prejudice may be reduced by the larger jury pool;***
- ✓ ***The jury is a 7 person jury with one alternate;***
- ✓ ***The jury decision must be unanimous;***
- ✓ ***Federal court tends to be more structured with strict adherence to rules of procedure and deadlines;***
- ✓ ***The parties have the option of consenting to a magistrate judge;***
- ✓ ***The parities may avail themselves of a settlement conference conducted by one of the magistrate judges.***
- ✓ ***Federal judges may have more expertise or experience with federal question matters than state court judges;***
- ✓ ***The voir dire may be conducted by the judge, which may limit the chances of persuasive-style questions by a party's attorney;***

Pleadings and Evidentiary Issues in Federal Court

I. CHANGES TO THE FEDERAL RULES OF EVIDENCE

A. 2012 STYLISTIC CHANGES

The U.S. Supreme Court approved amendments to the Federal Rules of Evidence which were meant to "restyle" the rules. The intent was to maintain the substance of the rules, and not change the meaning at all, while making them more user friendly. The Ninth Circuit has acknowledged these amendments were "purely stylistic." *United States v. Solorio*, 669 F.3d 943 (9th Cir. 2012) (cert. denied, 133 S.Ct. 109 (U.S. 2012).

B. 2014 AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

The court adopted some substantive changes to the Federal Rules of Evidence in 2013. Some of the key changes that affect civil litigation are:

- ✓ ***Rule 803(8) – If a party satisfies its burden to introduce a public record, the burden shifts to the adverse party to show that the source of the information or other circumstances indicate a lack of trustworthiness and the determination of untrustworthiness depends on the circumstances;***
- ✓ ***Rule 801(d)(1)(B) – Prior consistent statements may be admitted substantively when the statements are offered to rehabilitate the declarant's credibility when attacked on other grounds such as inconsistency or faulty memory.***
- ✓ ***Rule 803(6) – The amendments clarified that if the party satisfies its burden to introduce the business record, the burden shifts to the adverse party to show that the source of the information or the method of preparation indicate a lack of trustworthiness.***

II. PRESERVATION OF EVIDENCE

As part of the Rule 26(f) joint discovery conference, the parties must meet and discuss any issues relating to preservation of discoverable information. Fed.R.Civ.P. 26(f)(2). Attorneys representing clients in federal court should issue a preservation letter instructing their clients to preserve all potentially discoverable information.

- ✓ ***Consider who should get the preservation (in-house counsel, I.T. department, individual employees, etc…)***
- ✓ ***What is the relevant time period***
- ✓ ***What categories of information must be preserved (i.e. e-mails, voicemails, text messages, written or electronic documents, metadata, etc…)***

III. TIPS FOR ELECTRONIC FILING

- ✓ *The filing deadline in federal court is midnight, but the help desk closes at 5pm.*
- ✓ *Page numbering – number your pages at the bottom center and do not use a footer containing the title of the document. The CM/ECF will assign page numbers to the documents when filed, so use a numbering system that will make the numbers consistent.*
- ✓ *Citation format must conform to the most recent version of ALWD.*
- ✓ *Do not file initial disclosures, consents to the magistrate or notices of service of discovery.*
- ✓ *Be sure to redact social security numbers and file a motion to file under seal if the brief or pleading contains medical or other protected information.*
- ✓ *When citing to documents in the record, use the number the assigned to the document on the CM/ECF (i.e. instead of citing Pl.'s Compl, ¶ 6, cite Doc. 1 at p. 2). Standing Order No. DLC-13.*

IV. THE LANGUAGE OF THE INITIAL FILING

Local Rule 3.1 governs filing new cases. You must pay an initial filing fee ($350) and administrative fee ($50), and file a civil cover sheet identifying the type of case being filed and the basis for the court's jurisdiction.

Be sure to specifically identify the parties, plead the facts giving rise to personal jurisdiction (refer to a party's "citizenship" rather than "residency for purposes of personal jurisdiction), identify the claims for relief and the specific relief sought, and include the jury demand in both the body and caption of the pleading. In answers, be sure to include all defenses and affirmative defenses.

V. CORRECTLY SERVING AND RESPONDING TO THE SUMMONS

Federal Rule of Civil Procedure 4 governs service of the summons and complaint. Rule 4(m) currently requires service of the summons and complaint within 120 days after the complaint is filed. A proposed amendment would reduce the time for service to 90 days. Waiver of service is allowed under the federal rules and requires you to answer within 60 days of when the waiver was sent. Refusal to waive service requires you to pay the cost of service.

VI. MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM & PLEADINGS

A Rule 12(b)(6) motion to dismiss for failure to state a claim tests the legal sufficiency of plaintiffs' claims. Dismissal can be based on either "the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696,699 (9th Cir. 1990). In 2007 and 2009, the U.S. Supreme Court strengthened

the pleading requirements essential to defeat a Rule 12(b)(6) motion to dismiss. Whereas the old standard provided a complaint shouldn't be dismissed unless it appears beyond doubt that the plaintiff cannot prove a set of facts to support his claim, the new standard allows dismissal if the pleadings are insufficient.

- ✓ "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. —, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id*. (quoting *Twombly*, 550 U.S. at 5).
- ✓ Sufficiency of the Complaint (Rule 8)
  - o Rule 8(a) governs the sufficiency of the complaint. See discussion above for requirements imposed by Twombly and Iqbal.
- ✓ Pleading Standards Apply to Allegations of All Elements of a Claim
  - o Don't forget the heightened pleading standard for fraud under Rule 9(b).
- ✓ How Much Content is Enough to Draw a Reasonable Conclusion about the Alleged Liability?
  - o *Signal Peak Enerby, LLC v. Eastern Montana Minerals, Inc*., 922 F.Supp.2d 1142 (D. Mont. 2013) – Although courts must presume the truth of well-pleaded factual allegations, this requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 678. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Courts can therefore begin the Rule 12(b)(6) analysis by identifying allegations that are mere conclusions and therefore not entitled to the presumption of truth.

Thorough Discovery

➢ **Determining Scope**

Rules 26 through 36 and 45 govern the scope and methods of discovery.

Federal Rule of Civil Procedure 26(b)(1) authorizes discovery of "any nonprivileged matter that is relevant to any party's claim or defense--including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter." *Simpson v. Univ. of Colo.*, 220 F.R.D. 354, 359 (D. Colo. 2004) (citing Fed.R.Civ.P. 26(b)). "When the discovery sought appears relevant, the party resisting the discovery has the burden to establish the lack of relevancy by demonstrating that the requested discovery (1) does not come within the scope of relevance as defined under Fed. R. Civ. P. 26(b)(1), or (2) is of such marginal relevance that

the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure." *Id*. (internal citation omitted).

The principle of proportionality is reflected in the second part of the analysis and is inherent in the Federal Rules. *Id*. (citing Fed. R. Civ. P. 26(b)(1) and (b)(2)(C)(i)-(iii)). The court should consider how much discovery is reasonable in a given case in light of the claims and defenses asserted, the significance of the discovery sought to the propounding party, and the costs and burden to the producing party. *Id*. The Federal Rules also permit a court to restrict or preclude discovery to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. See Fed. R. Civ. P. 26(c). Whether to issue a protective order rests within the discretion of the court. *Id*. (citing *Wang v. Hsu*, 919 F.2d 130 (10th Cir. 1990)).

When objecting to discovery as overly broad or unduly burdensome, be prepared to support the objection. If you're forced to file a motion for protective order, the U.S. District Court will not grant it, even if it is unopposed, unless you have an affidavit from your client that details the reason the request is overly broad or unduly burdensome and the specific harm that will occur if the motion isn't granted.

Discovery under the Federal Rules differs from discovery under the Montana Rules in several respects.

	Montana State Court	**U.S. District Court**
Initial Disclosures – Rule 26(f)	Not required	Required without any request for discovery. Many judges in the U.S. District Court use a preliminary pretrial order that bars service of discovery requests until after your initial disclosures have been served.
Joint Discovery Plan – Rule 26(f)	Not required	Required before discovery may commence
Expert Disclosures – Federal Rule 26(a); Montana Rule 26(b)(4)	No specific expert disclosure required. Parties may discover facts known and opinions held by experts through interrogatories, depositions and requests for production	Specific Expert Disclosure required with expert report required from all retained testifying experts
Interrogatories – Rule 33	Limited to 50 unless by leave of court	Limited to 25 unless by leave of court or stipulation of the

		parties
Requests for Admission - Rule 36	No limit	No limit
Requests for Production – Rule 34 for parties & Rule 45(a)(1(A)(iii) for non-party subpoena	No limit	No limit
Oral Depositions – Rule 30	Limited to 10 per side unless by leave of court or stipulation of the parties	Limited to 10 per side unless by leave of court or stipulation of the parties
Written Depositions – Rule 31	Any written deposition is included in the 10-deposition limit imposed by Rule 30	Any written deposition is included in the 10-deposition limit imposed by Rule 30
Motion for Physical or Mental Exam – Rule 35	Allowed only by court order when the person's physical or mental condition is in dispute	Allowed only by court order when the person's physical or mental condition is in dispute

➢ Timing Considerations

Unless the court orders otherwise, discovery can be conducted in any sequence. Fed.R.Civ.P. 26(d)(2). Rule 26 sets forth time limits within which parties must:

- *Serve initial disclosures* – Within 14 days after the parties Rule 26(f) conference;
- *Disclose Expert Testimony* – At the times specified by the court or absent a stipulation or court order, at least 90 days before the trial or if used for rebuttal, within 30 days after the other party's disclosure;
- *Pretrial disclosures and objections* – Unless the court orders otherwise, disclosure must be made 30 days before trial and objections served 14 days after disclosures; and
- Hold the joint discovery conference as soon as possible, but at least 21 days before a scheduling conference.

➢ Keeping Costs Down & Cost Shifting

- Fed.R.26(b)(2)(B) – Need not produce electronically stored information "not reasonably accessible because of undue burden or cost."

- *Zubulake v. UBS Warbur LLC*, 217 F.R.D. 309 (S.D.N.Y. 2003) – Developed 7-part test for cost-shifting in electronic discovery. Resulted in current cost-shifting language in Rule 26(b)(2)(C)(iii). Montana Rule now includes the Federal Rule cost-shifting factors.

- *Quinby v. WestLB AG*, 245 F.R.D. 94 (S.D.N.Y. 2006) – Presumption is responding party pays for production. Retrieving readily available e-mails is not an undue burden, but retrieving from backup tapes may be. Some cost-shifting may be allowed against an employee but not enough to "chill the rights of litigants to pursue meritorious claims."

- *Semsroth v. City of Wichita*, 239 F.R.D. 630 (D. Kan. 2006) – Court weighed governmental entity's ability to shoulder cost of discovery less than that of a large private employer such as those in *Zubulake* and *Quinby*.

- Fed.R.Civ.P. 54(d) allows the prevailing party to recover costs (other than attorneys' fees) to be recovered from the adverse party. In federal court, the cost of "copies," is recoverable.

- *Synopsys, Inc. v. Ricoh Co. (In re Ricoh Co. Patent Litig.)*, 661 F.3d 1361 (Fed. Cir.2011) – Cost for reproduction of e-mails was recoverable as a cost for "copies" under Rule 54(d). The district court awarded $322,515.71 for reproduction and exemplification of e-mails, and the Federal Circuit reduced the award to $146,584.83.

    - 28 U.S.C.S. § 1920 – Costs defined and include, "fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case."

    - In state court, copies are not a recoverable cost. Mont. Code Ann. § 25-10-201 – Costs defined, but copies not included.

➢ Deposing Adverse Witnesses

An adverse witness may be deposed in person, by video or telephone or in writing. Fed.R.Civ.P. 30, Fed.R.Civ.P. 31. Reasonable notice must be given before taking an oral deposition. The notice of deposition should not be filed with the court. Fed.R.Civ.P. 5(d)(1).

If the notice of deposition names a corporation, association, governmental agency or other entity under Rule 30(b)(6), it must describe the subject matter on which the entity's designee will be deposed. When representing an organization, be sure to understand the entity's obligations in response to a Rule 30(b)(6) notice of deposition, including the following:

- ✓ The entity must designate one or more people to testify about each subject area listed in the notice;
- ✓ The persons designated must testify to the knowledge of the organization, not their own knowledge;
- ✓ If the entity designates someone without knowledge about which the organization will testify, it may be sanctioned;
- ✓ The entity must prepare the witnesses so they will give complete, knowledgeable, and binding answers on behalf of the organization.
- ✓ The witness must be able to testify about facts within the organization's knowledge and about the organization's subjective beliefs and opinions. See *Paul Revere Life Ins. v. Jafari*, 206 F.R.D. 126 (D.Md.2002).

➢ Document Production

- ✓ Identify and Disclose Categories of Documents and Information – Fed. R. Civ. P. 26(a)(1)(A)(ii) – Initial disclosures impose a duty to disclose by category or description, all electronically stored information.
- ✓ Produce In a "Reasonably Usable Form" – Fed.R.Civ.P. 34 requires production of electronically stored documents "in a form or forms in which it is ordinarily maintained or in a reasonably usable form."
    - *Nat'l Jewish Health v. WebMD Health Servs. Group*, 2014 U.S. Dist. LEXIS 69669 (D. Colo. Mar. 24, 2014) – It isn't necessary to produce e-mails in the form they're ordinarily maintained so long as they're in a reasonably usable form. But parties are not free to convert them into a less useful form or disable the search function in order to make review more burdensome for the opposing party.
- ✓ Memorialize Counsel Agreements in the Joint Discovery Plan -
    - *Melian Labs, Inc. v. Triology LLC*, 2014 U.S. Dist. LEXIS 124343 (N.D. Cal. Sept. 4, 2014) – "Rule 34(b) only requires that the parties produce

documents as they are kept in the usual course of business or in the form ordinarily maintained unless otherwise stipulated. Fed. R. Civ. P. 34(b)(2)(E). The parties' Joint Rule 26(f) Report is a stipulation, and, therefore, Rule 34(b) does not govern."

REFERENCES

- Michael C. Smith, O'Connor's Federal Rules, Civil Trials 2015, (Jones McClure Publishing 2015);
- Federal Rules of Civil Procedure and Advisory Committee Notes, 2011 and 2013;
- Federal Rules of Evidence and Advisory Committee Notes, 2011 and 2013;
- Local Rules of Civil Procedure http://www.mtd.uscourts.gov/pdf/rulesorders

QUESTIONS?

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