ALICE IN DISCOVERY LAND
(A Practical Guide To Recurrent Discovery Problems)

With sincere apologies to Lewis Carroll, I have modified the title of his classic work to point out some practical considerations that occur on a regular basis in "Discovery Land." In Prince George's County, since 1995, specific motions, i.e., discovery, summary judgment, motions to dismiss, motions for leave to withdraw, etc., are each decided by a specifically assigned Judge. While Prince George's County retains a Judge in Chambers, that Judge only resolves matters that arise on a particular day and does not resolve any of the issues in the specially assigned motions practice. The hope is that the assigned motions Judges have developed greater expertise in the specific subject matter assigned to them, or as some lawyers have pointed out, although developing no expertise, at least the erroneous decisions are more consistent.

Since 1995, I have been the Discovery Judge for all Civil, Non-Family Law cases and have seen a number of recurrent problems and innovative solutions within the discovery process. The purpose of this article is to provide some practical pointers. With any of the examples given, please assume that for the specific time and place, the discovery rules in force are identical to those adopted by the Court of Appeals.

CUSTER VS. SITTING BULL
2-401(e) and 2-401(d)(2)
Giant Food vs. Satterfield, 90 Md. App. 660 (1992)

In 1876, before his rendezvous with history at The Little Big Horn, General George Armstrong Custer sent a single Interrogatory to his protagonist, Sitting Bull, and received a response upon which he acted to his detriment:

> Q: When I arrive at the Little Big Horn who will be there with you?
>
> A: As of this time, I anticipate bringing only Crazy Horse and a few of his friends.

Armed solely with this information, and obviously little thought, General Custer embarked upon his appointment with destiny. It is respectfully suggested that had General Custer taken the slightest precautions permitted by the Maryland Rules of Civil Procedure, his history, if not that of the United States, would have been markedly different. Any first year law student reviewing this answer would have concluded that it was non-responsive, ambiguous to a fault, and probably, whether intentionally or not, misleading. General Custer, after Rule 2-431 good faith attempts to discuss a more definitive answer with his adversary, could have filed a motion pursuant to Md. Rule 2-432(b)(2), and asserted that Sitting Bull's response was "an evasive or incomplete answer". The Court assumptively would have entered an Order requiring Sitting Bull to be far more specific. However, the closer one gets to the trial date the less time there is to get a Motion filed and ruled upon in time to be of a practical benefit.

Assuming that General Custer failed to adequately or timely review the discovery, or was stymied in his 2-431 efforts and had inadequate time left to file a motion under Rule 2-432(b)(2) as suggested, he had another option.

Rule 2-401(e) states in material part:

> Supplementation of responses. Except in the case of a deposition, a party who has responded to a request or order for discovery and who obtains further material information before trial shall supplement the response promptly.

It is evident that the drafters of the Rule envisioned that it would be self-executing; however, experience has taught practitioners and the Court that this is not always the case. Suppose instead of riding out to Little Big Horn, armed only with the Answer given by Chief Sitting Bull, General Custer sent a document encaptioned:

Though the Rules do not expressly provide for the creation of such a document, neither do the Rules expressly prohibit the filing of such a document. While all realize Rule 2-401(e) is <u>supposed</u> to be self-executing, evidenced by the use of the words "shall" and "promptly", that is not what frequently occurs. Judges are periodically required, just before or during trial, to resolve issues concerning the tardy designation of experts, additional fact witnesses, and the like. In the absence of the filing of a Notice of Service requesting specific supplementation of discovery within a finite time, the Trial Judge is placed in a position of attempting to

accomplish "substantial justice" which may in effect harm one party or the other. In Giant Food vs. Satterfield, 90 Md. App. 660 (1992), a suit against Giant Food for a slip and fall in a grocery aisle, the Trial Judge and subsequently the Court of Special Appeals, were faced with this all too familiar situation. One week before trial, the Plaintiff amended her answers to interrogatories to include a previously undesignated expert witness and a previously unidentified lay witness. While this case was reversed for other reasons, the Court of Special Appeals specifically held that the Trial Judge did not abuse her discretion in permitting the two witnesses to testify since the administration of discovery rules had been left to the sound discretion of trial Judges and evidence should not be excluded unless the delinquent party was willful, or contumacious in the failure to make a more timely disclosure. See Klein v. Weiss, 284 Md. 36 (1978).

Few practitioners would contend that learning of an additional expert and lay witness one week before trial was sufficient. Imagine however what the position of the Trial Judge in Giant Food vs. Satterfield or in Custer vs. Sitting Bull would have been had Giant Food or General Custer submitted a "Notice of Service" under Rule 2-401(e) and requested, sixty (60) days prior to trial, the supplementation of all discovery within a fifteen (15) day period. While prognosticating Trial Court rulings or Appellate review is a hazardous occupation, it is respectfully suggested that in the face of a 2-401(e) filing as suggested, the Trial Judge in either case would have excluded the expert and lay witness and confined Crazy Horse to "a few of his friends" and not several thousand warriors.

"YOU AND ME AND A DOG NAMED BLUE"
2-403(a)(6), 2-415(b) and 5-615

The lines that I have plagiarized from a well-known country and western song will be utilized to answer a simple but frequently asked question and that is: Who can attend a deposition? I suggest to you that by the time you finish this section the answer will be "you and me and a dog named Blue."

Periodically as depositions are about to occur, a conference call will be initiated by counsel to me as the Discovery Judge. The availability of a single regularly assigned Judge to answer these emergency questions has, in our opinion, facilitated the discovery process in this County. Some of the frequently raised questions are: Who is entitled to be present at the deposition? May several lawyers for a single party, law clerks, investigators, a non-party parent or spouse or expert witnesses who may be called at trial also be permitted to be present?

The proponent of exclusion inevitably cites 2-403(a)(6) that "discovery be conducted with no one present except persons designated by the Court", 2-415(b) which provides in substance that the examination and cross-examination of the deponent should "proceed as permitted in the trial of an action in open court", and 5-615 which provides for the exclusion or non-exclusion of certain witnesses at trial upon request of any party. In essence, counsel argues that because the request will be made subsequently at trial, no one except the deponent, counsel, parties and necessary technicians should be present. Assuming that the additional individuals proposed to be excluded do not fall within the exceptions with respect to "witnesses

not to be excluded". Rule 5-615(b) or "permissive non-exclusion", Rule 5-615(c), the Court must decide who can be present.

As noted earlier, you and me and a dog named Blue will all be at this deposition. Example, Plaintiff contends that a Pit Bull named Crusher bit him. The defense contends that it was Blue, not Crusher, that bit the Plaintiff. I, the non-party owner of Blue, have been subpoenaed to a deposition of the Plaintiff "*duces tecum*", which means bring the dog with you. At this deposition, defense counsel expects the Plaintiff to identify Blue and not Crusher as the culprit. Since the statute of limitations has run, Plaintiff's counsel objects to our presence at the Plaintiff's deposition. Under these circumstances, since I am a potential defendant in this or a future action because of Blue's bite or non-bite status, I have decided to bring a lawyer, you. Thus, in order to conduct this deposition, you and me and a dog named Blue will all be in attendance over the vehement objection of Plaintiff's counsel.

There are of course situations in which the Court will exclude individuals from depositions, permit their attendance but curtail any comments or actions they may take, or issue necessary orders. Under our system, since a single Judge is the Discovery Judge, counsel knows who to contact as problems arise and the disruption caused by the later filing of motions by parties for refusing to proceed with depositions, etc., is kept to a minimum.

REACH OUT AND TOUCH SOMEONE
2-418

An underutilized Rule is the one permitting the taking of depositions by telephone. Where witnesses were once readily found within the county or state,

such is not the case in our highly mobile society. The Court is regularly called upon to resolve the issue of whether an impecunious party, usually the plaintiff, can take the deposition of an essential witness who lives in Timbuktu or some other out of state location by telephone. Defendants, who are quite often represented by counsel retained by the Big Bucks Insurance Company, wish not only to be present at the taking of the deposition in Timbuktu, but also want the same to be videotaped and a discovery deposition to be taken not less than two (2) weeks in advance. Considering the relative economic strengths of the two parties, we regularly conclude that the Plaintiff is free to participate in the discovery and videotape depositions by telephone. Similarly, defense counsel is free to fly to Timbuktu to take a discovery deposition, at which, Plaintiff will participate by telephone. Defense counsel may then take a later *de bene esse* videotape deposition, and the Plaintiff will again attend by telephone. The cost to the Big Buck Insurance Company is in excess of $25,000. The cost to the Plaintiff, less than $150.

Inventive, imaginative use of telephone depositions for witnesses in or out of state, absent, infirm, or indeed incarcerated should be fully explored by counsel.

WHAT BLOCKBUSTER DOESN'T KNOW
2-412(b), 2-419(a)(4)
2-416(b), 2-416(g)

The advent of the videotape, *de bene esse* deposition, has markedly reduced the cost of producing expert testimony at trial and significantly enhanced the Court's ability to maintain an orderly trial schedule without waiting for the arrival of expert witnesses who, in the undersigned's experience, are inevitably late. What is overlooked by many practitioners however, is the series of Rules that accompany

the taking of these depositions. If a videotape deposition is to be taken for use at trial, pursuant to Rule 2-419(a)(4), the Notice establishing the deposition shall so state. Periodically, the Court is called upon to exclude depositions at trial which did not comply with this simple notice provision. Under Rule 2-419(a)(4), the videotape deposition of an expert, customarily defined as "anyone with a briefcase and more than twenty-five miles from home", may be used for any purpose even though the witness is available to testify, so long as the Notice of the Deposition specified that it was taken to be used at trial. There does not appear to be any discretion vested in the Trial Judge if the Notice fails to alert the opponent that this deposition was for use at trial.

The potential pitfalls of *de bene esse* depositions however are not simply confined to this Notice. Rule 2-416(g) provides:

> "...A party intending to offer a videotape or audiotape deposition in evidence shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time to allow for objections to be made and acted upon before the trial or hearing." (emphasis supplied).

Nothing could be clearer or more often ignored. In addition to the creation of Notice of Service under 2-401(e) discussed earlier, a second suggestion is for the creation of a "form" pertinent to this Rule. Either in the original Notice or in a Notice that is generated immediately after the deposition, and in either case filed with the Court, the party intending to offer a deposition that is subject to this Rule should immediately notify the Court and opposing counsel. If in advance you know you will offer the entire deposition, put this assertion in the original 2-419(a)(4)

Notice. Considering the proliferation of computers, this Notice should become a standard pleading to be invariably filed by the party taking the deposition in question - why else are you taking a *de bene esse* deposition except to introduce evidence at trial? After the filing of such a Notice, the burden of persuading the Trial Court to exclude, or indeed include if the Notice seeks less than all of the deposition to be introduced, falls upon the opposing party because 2-416(g) also provides:

> "Objections to all or part of the deposition shall be made in writing within sufficient time to allow for objections to be made and acted upon before the trial or hearing..."

Without fear of contradiction, I would suggest that no Trial Judge wishes to stop in the middle of a trial and read a transcript, review a videotape of a deposition, or do both of these things in order to determine what portion or portions should or could be admitted into evidence and how at this late stage in the proceeding this can mechanically be accomplished. Through the simple filing of a single piece of paper, the burden of persuasion shifts to the party opposing the introduction of some or all of the deposition. What do you have to lose?

THE FIFTH (AND LAST) IME – NOT DR. KEVORKIAN
2-423

Of all the oxymorons in the world an Independent Medical Examination occupies first place by thousands of leagues. There is nothing Independent about the process; it is hardly undertaken for any Medical purpose and all too often resembles an inquisition rather than an Examination. The oft asserted "right" of the Big Bucks Insurance Company's counsel to require an Independent Medical Examination does not exist in fact or in law. Rule 2-423, *which does not speak*

about independent medical examinations but merely mental or physical examinations of a person under some circumstances, provides in substance that the Court has discretion in determining if such an examination could be undertaken, and if so, under what terms and conditions. Parties advance a number of "terms and conditions" which they believe are justified under the circumstances of a particular case. Periodically, Plaintiff's counsel will ask to be present or to have a healthcare provider present or the spouse of the examined person or the parent of a child, etc. Each of these requests has to be examined independently under the simplistic rule of reasonableness. It is highly doubtful that lawyers, clerks, paralegals, or the like, contribute in any meaningful respect to the examination envisioned under this Rule, and are routinely excluded. A different case however can be made for a healthcare provider who is present merely to observe, to insure the accuracy and thoroughness of the examination. Similarly, the spouse of an ailing partner or the parent of a young child, are also logical persons to be present so long as neither becomes involved in the process.

More difficult questions arise when, for articulated reasons, the individual being examined wants a tape or video record of the proceedings. If there is a sound reason for the request, it is inevitably granted. If there are no sound reasons and it appears to be merely a disruptive tactic, the ruling is the reverse.

The location of independent medical examinations is also often disputed. It is unreasonable to require a Plaintiff living in St. Mary's County to travel to Frederick for one of these examinations, absent extraordinary cause. The location of the Plaintiff's residence and the availability of comparable experts is a factor the Court

will consider. Additionally, where the examination is to be taken "out of State", for example in Washington, D.C. or northern Virginia, inventive Plaintiff's counsel have advanced the argument that if the examination is favorable from the Plaintiff's perspective it would be difficult or indeed economically prohibitive for the Plaintiff to procure the testimony of the expert witness; therefore, the examination should not be held beyond the Court's subpoena process. This argument has been sufficiently ingenious to persuade the undersigned to inevitably enter the same order. If the examination is to be undertaken by an expert witness who is not amenable to service of process by a Maryland Court, then the expert witness is required to provide a written report containing all of his or her findings within fifteen (15) days of the date of the examination. The Court then grants leave to the opposing party to depose the expert within a specified period of time, but not to interfere with trial. Under these circumstances, the cost of deposing the out of State expert witness is born by the party requesting the examination and not by the party taking the deposition.

The caption of this Section indicates the concern many practitioners have with regard to certain expert witnesses. There is a feeling amongst trial lawyers which has been recognized by appellate Courts that these expert witnesses are not truly independent experts but merely advocates of hired guns. See Wroblewski vs. de Lara, 353 Md. 509 (1999) Under these circumstances, counsel quite often requests that a list of three to five expert witnesses in the field be provided by the counsel requesting the examination and to allow the opponent to select from that list. As "fair" as this proposition facially appears, it is never granted over the objection of

opposing counsel. While the Court does have the authority to control examinations under Rule 2-423, it does not have the authority to select, by exclusion or inclusion, any party's expert witnesses. The Court's authority, it appears, is limited under most circumstances to regulating the conduct and results of the examination, not the individual who performs it.

ASK MY LAWYER, NOT ME
2-421(b) and 2-402(a)

Periodically, in response to an interrogatory that vaguely suggests the application of law to facts, such as, "What are all the facts constituting your affirmative defense of contributory negligence?," the Court will see the following response:

"Objection – this interrogatory calls for a legal conclusion."

With all due respect, it is suggested that counsel review Md. Rule 2-421(b) which provides that answers are required to "include all information available to the party directly or through agents, representatives or attorneys," and 2-402(a) which pointedly provides that:

> "...An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact."

There are limits however. No one is suggesting that at a deposition a lay witness should be asked to apply the Rule in Shelly's case or the Rule Against Perpetuities to a 550 word hypothetical question. But when questions are pointedly directed, particularly towards issues raised by the party's own pleading, it is appropriate to ask a question, the answer to which may involve a legal conclusion.

"I RESERVE THE RIGHT TO CALL AS AN EXPERT ANYBODY MENTIONED IN THE 4,916 PAGES OF DOCUMENTS PRODUCED BY ANY AND ALL PARTIES TO THIS LITIGATION."

2-402(e) Mitchell vs. Montgomery Cty., 88 Md. App. 542 (1991)
2-402(e)(2) 103 Md. App. 34 (1994)

As Julius Caesar noted:

> "All Experts are divided into three parts. Those to be called at trial, those not to be called at trial, and those to be hidden until trial."

Rule 2-402(e)(1) requires a party, upon request, to name and provide specified information about experts to be called at trial. Rule 2-402(e)(2) permits, under some circumstances, the same disclosures with respect to experts who are not to be called at trial. No rule permits a party, when requested, to conceal either the identity or discoverable opinions of an expert witness, however. a party who chooses to invoke formal discovery under 2-402 "may not force disclosure of the findings or opinions of experts who are retained by another party in anticipation of litigation or for trial but who are not expected to be called to testify". Dorsey v. Nold, 362 Md. 241 at 254 (2001). The practitioner who accepts the answer above probably deserves the trial by ambush that will inevitably occur, however either of the two alternatives raised in Custer vs. Sitting Bull would resolve this issue.

The second metamorphosis of this issue occurs when the responding party lists 20-25 supposed expert witnesses and "reserves the right to call any of the foregoing expert witnesses". The Rules do not contemplate such misleading designations. The number of trials in which 20-25 expert witnesses have actually been called is infinitesimal and in the undersigned's experience non-existent. Thus,

the answer is non-responsive and designed to mislead and confuse the opponent. This issue is resolved by the undersigned with a fairly succinct order, which states in pertinent part, that the opposing party is free to depose each and every expert witness so listed. The order goes on to state that for each expert witness not called by the opposing party at trial, the Court will assess counsel fees and the costs of taking the deposition against the opposing party and/or counsel. As if by a miracle, the list of 20-25 is reduced to 2-3 expected names and discovery proceeds.

PROTECT ME, I'M LATE
2-403, 1-351, 2-510(f)

Periodically, parties and non-parties seek a protective order asserting that the requested discovery is oppressive, irrelevant, demeaning, or just plain "fattening." In short, for whatever reasons, the movant simply doesn't want to comply and seeks a protective order under 2-403. Since time is usually a factor, the movant also files a Motion to Shorten Time under 1-204. Unfortunately, the Motion to Shorten Time invariably fails to comply with the Notice provisions of 1-204(b) or 1-351, both of which specify that the Court may not grant an *ex parte order*, unless the moving party has notified opposing counsel and those that might be effected by the proposed entry of the order "of the time and place the moving party intends to confer with the Court". Unfortunately, many Motions to Shorten Time and thus, the companion Motions for Protective Orders, languish until fully responded to by all parties or the requisite time expires. Read these Rules together and make only one trip to the Courthouse.

Particularly adept counsel also opt for the provisions of Rule 2-510(f) where the real nature of the protective order request is not the testimony of a witness but the documents which have been the subject of a subpoena. Rule 2-510(f) permits the individual served with a subpoena to attend the deposition without the requested documents, provided that an objection is filed within 10 days after service. The deposition may go forward but the documents will not be produced unless, and until, the requesting party, within 15 days of the deposition, moves for an order to compel the production of the documents.

NO PROPOSED ORDER SUBMITTED

Res ispa loquitur – little more need be said. After spending hours of time and the client's money preparing a 50 page motion with dozens of exhibits, etc., all too often, counsel fail to submit a simplistic order that realistically encompasses the Court's likely ruling or in the alternative, drafts an order which allows the Court to strike out the non-utilized portions. Gilbert & Sullivan observed "let the punishment fit the crime". The terms of order should bear some relationship to the magnitude of the perceived discovery violation. It is highly unlikely, bordering on odds less than winning PowerBall, that any Judge in Maryland will order a default or dismissal because the opponent's answers to interrogatories were three hours late. The order should require the interrogatories to be answered, not your opponents to be executed.

Inevitably, parties in discovery generate Motions To Compel for which orders are presented in two different formats. That is to say that the requested discovery be provided "within ____ days of the date of this order" or "on or before the ____ day of _____, 2001."

An argument consistently has been advanced that when the Court uses the first type of order, it is not effective until it is entered by the Clerk and the time to produce, etc., does not commence until that entry. In a busy jurisdiction such as Prince George's County, the Civil Clerk's office, which is understaffed and underpaid, is often 10 days behind in the entry of routine orders. The argument advanced then is that the "offending party" has the specified number of days from the date the Court Clerk entered the order, not the date the Judge signed it. This deficiency is cured by use of the second form of Order.

The second form takes into consideration the fact that there may be delays in the entry of the order by the Clerk but requires that the discovery be provided by a certain date regardless of when the Clerk enters the order. For unknown reasons, less than 5% of the Bar utilizes the second form of order.

KELCH AND SHENK
Kelch, 287 Md. 223 (1980)
Shenk, 86 Md. App. 498 (1991)

Contrary to popular opinion, Kelch and Shenk are not the names of nomadic tribes who wander the Gobi Desert. They are two fundamental decisions that are frequently ignored. After years of reviewing Discovery Motions in this area, I am convinced that no statement was ever taken of any witness or party except "in anticipation of litigation" or as a "work product of counsel" or pursuant to the "attorney/client relationship". The issue usually arises when a Plaintiff, but

occasionally a Defendant, seeks to obtain the written or recorded statement of a party or witness that was taken by the opponent's lawyers, investigators, or insurance representatives. The question is asked as to whether there are any such statements, photographs, etc., and the response inevitably is the same. First, there is an objection because the response would invade the attorney's work product or would require the production of a written or oral statement made in anticipation of litigation or is otherwise protected by the attorney/client privilege. After a Rule 2-431 inquiry between counsel, usually, an answer is amended to indicate that there is a statement of a witness or party but for the previously stated reasons it will not be produced.

After the party in possession of the statement correctly responds to the interrogatory, the issue is framed. The date the statement was taken, by whom it was made, to whom it was made, and the circumstances under which it was made, should be, but are not always, supplied.

It is at this point that Kelch vs. Mass. Transit Administration, 287 Md. 223 (1980), and Dupont vs. Forma-Pack, 351 Md. 396 (1998) are instructive. The procedures established in Kelch are simplistic but often ignored by the Bar. For the ease of the reader they are set out below with updated Rule references:

> (a) In the event the motion respondent answers that it has no knowledge as to the existence of such demanded item, or that, while it knows of the item's existence, it is neither within its possession nor control, the burden is on the demanding party to factually show to the contrary by a preponderance of the evidence;
> (b) If the responding party, however, while acknowledging either possession or control of the demanded item, says it is not discoverable by virtue of Md. Rule 2-402(e) exception provision that the item was "prepared in anticipation of

litigation or for trial" (or for any other proper reason), the burden is upon the responding party to substantiate its non-discovery assertion by a preponderance of the evidence; and

(c) If, on the other hand, the demanding party, while recognizing that the requested item was "prepared in anticipation of litigation or for trial" by his adversary, claims discovery under the exception authorized in Rule 2-402(c) the burden of so establishing by a preponderance of the evidence rests on the exception claimant.

Where there is a dispute the Court invariably schedules a hearing and Kelch governs the burden of proof and persuasion. Unless the facts are undisputed, and they never are, the party bearing the burden of proof and persuasion must produce evidence in the form of witnesses, deposition extracts, or Affidavits under 2-311(d), not just the argument of counsel.

In Shenk v. Berger, 86 Md. App. 498 (1991), the Court of Special Appeals dealt with a companion issue. Where there is particular information adverse to a party or a witness, such as photographs, tape recordings, videotapes and the like, these items need not be disclosed to the witness/party before the taking of that specific deposition but must be disclosed thereafter.

L'AUDACE, L'AUDACE, TOUJOURS, L'AUDACE

Innovative approaches to age-old problems are the hallmark of successful practitioners. After ruling on post deposition Motions involving 181 objections in a 183 page deposition, it occurred to the Court that there might be a better way to deal with this problem in advance. Depositions from Hell, whether engendered by animosity of the parties, counsel, or both occur in the practice of law.

When faced with these less than "civil" discovery proceedings, counsel occasionally ask the Court to "referee" the depositions in open Court. This request is rarely granted, *inter alia*, because it fails the "what's in it for me test". After some thought however, a middle ground has been adopted and has been very successful. Instead of conducting the depositions "in the presence of a Judge" in a courtroom, they are scheduled in the conference room adjacent to Chambers. We have found that the "proximity" not "presence" of a Judge is all that is required to maintain a modest level of decorum. When a dispute erupts, one of the four Judges located in this section of the courthouse will intervene on the record and resolve the dispute. In the 30-40 depositions conducted in this manner, over the last 5 years, Court involvement has been needed on no less than a dozen occasions.

While not all jurisdictions designate a specific Discovery Judge, most are required by Rule 16-102 to have a Judge in Chambers who can perform the same function. There is no reason to cope with the depositions of the Hatfields and the McCoys, nor the aftermath of pleadings that inevitably occur when this simple procedure is readily available.

CALL THE JUDGE!

Quite often, I will receive a conference call from all counsel engaged in or preparing to start a deposition with a question of procedure, as in "Blue" infra or substance. By resolving the issue in a pre-deposition conference call, no subsequent pleadings are filed, the discovery process moves on smoothly, and the cost of litigation is reduced. Since there is a Court Reporter present and usually a speaker

phone, there is a record, and the Court can dictate a brief Memorandum to the Court Reporter outlining the dispute and its resolution.

FINALLY, Q.A.R. 2-432(b)(2)

The last thoughts that I want to share still occur frequently. Interrogatories are propounded, answers received, 2-431 "conferences" undertaken, and Motions to Compel filed. Invariably, counsel will attach the Interrogatories and usually the Answers. Rarely will counsel comply with Rule 2-432(b)(2), "Contents of Motion", which requires the Moving Party to set forth the Question, Answer, and Reason why the Motion should be granted or denied. In the absence of compliance, the Motion is denied without prejudice. Why not do it right the first time?

Dispositive Motion Protocol

1. A party filing a Motion To Dismiss [not related to alleged Discovery violations] or Motion For Summary Judgment will write a letter to the Judge who is assigned to that Motion [which is determined by the last number of the case], notifying the Judge that the Motion has been filed and indicating whether a Hearing is requested. The letter should be copied to opposing counsel, but not filed with the Clerk.

2. The party responding to the Motion To Dismiss or Motion For Summary Judgment will likewise send a similar letter to the Assigned Judge. This letter should also be copied to opposing counsel, but not filed with the Clerk.

3. Upon receipt of the responding letter, the Judge will retrieve the Court file in which the Motion has been filed and will rule on the Motion. If a Hearing has been requested, a Hearing will be set if the Court believes that the Motion may be granted.

4. Requests for extensions of time to respond are to be addressed to the Assigned Judge by letter.

5. The Motions Hearing shall be set, by the Judge, no later than thirty (30) days after the Motion and Response have been filed.

The Assigned Judges for Dispositive Motions are determined by the last digit in the case #; for consolidated cases, the first filed case # is used:

1	Spellbring	6	Hotten
2	Schiff	7	Shepherd
3	Martin	8	Whalen
4	Platt	9	Lamasney
5	Missouri	0	Lombardi

Other Motions:

Motions to Strike Appearance of Counsel – Send a letter notifying Judge Sotboron that the Motion has been filed.

Motions to Transfer For Forum Non Conviens or To Dismiss For Improper Venue – Send a letter notifying Judge Missouri that the Motion has been filed.