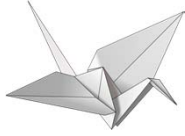


**PAPER MACHE, ORIGAMI & AND OTHER
CREATIVE THINGS TO DO WITH PAPER:**

The Art Of Paper Discovery In Texas



PAUL N. GOLD

BASIC INITIAL CONSIDERATIONS

**QUESTIONS YOU MUST ASK AND ANSWER
AT THE OUTSET**

**What Are The Legal Issues?
What Is The Timeline?
What Are Going To Be The Battles?**

FORMULATE A STRATEGY

Do You Think You Can Convince The Other Side To Settle?

Are You Preparing The Case For Trial?

REGARDLESS OF STRATEGY. . .

You Need The Data The Jury Will Need To Answer The Special Issues In The Charge

DON'T JUST SEND A REPRESENTATION LETTER, SEND A REPRESENTATION/PRESERVATION LETTER

KEY INQUIRY

**When Did The Defendant First Anticipate
Litigation Arising From The Incident In
Question?**

PRESERVATION LETTER BENEFITS

- Preserve Potential Evidence**
- Finesse Discussion Of What Defendant Possesses**
- Define The Discourse About What Is Relevant To The Claims And Defenses**
- Lay Predicate For Protective Order**

KNOW THE LEGAL ISSUES AND THE DEFENSES

DRAFT THE CHARGE

**PLEADINGS DEFINE THE SCOPE OF
DISCOVERY**

**Your Discovery Must Dovetail With
Your Pleadings**

THE FEDERAL APPROACH

MEET/CONFER BEFORE ANY DISCOVERY

**Disclose What Is Relevant To Claims And
Defenses**

**Discuss What Discovery Can Be Agreed To
And What Will Be Contested**

**SEEK A PRE-TRIAL CONFERENCE
TO DISCUSS, TIMELINE, SCOPE AND
POTENTIAL ISSUES**

PICK YOUR FIGHTS

What Do You Really Need To Prove Your Case?

Limited Capital With The Court

TIMING

**CRITICAL AND CONTINUOUS
CONSIDERATION**

INITIAL DISCOVERY

Disclosures

Identification Interrogatories

Depositions Of Corporate Representatives

DISCLOSURES

INCLUDE IN ORIGINAL PETITION

Wording Of Requests And Responses
Conform Exactly To Wording Of Rule

DUTY TO PROVIDE COMPLETE RESPONSE

**“WILL SUPPLEMENT”
IS A NON-ANSWER**

Either The Party Can Respond Or Not.
There Is An Inherent Duty To Supplement

INCORPORATING PLEADINGS BY
REFERENCE
INSUFFICIENT
FACTUAL BASIS FOR LEGAL THEORY

ECONOMIC MODEL

Defendants Believe General Denial Gives
License To Fish For Viable Defenses

WRONG

SPECIALLY EXCEPT TO INCOMPLETE
RESPONSES

OBJECT TO IMPROPER RESPONSE

MEDICAL AUTHORIZATIONS

Defendant Gets To Choose Medical
Records Or Authorization, But Not Both,

GET

AN AGREEMENT

PROTECTIVE ORDER

PROTECTIVE ORDERS

If Defendant Wants Authorization, Get Protective Order/Agreement Allowing Plaintiff To Identify And Protect Privileged Matters

DEFAULT
Confidentiality Subject To Seeking Hearing And Proving Privilege

RULINGS ON OBJECTIONS

**Get Timely Rulings (Before Trial)
And Written Orders**

INTERROGATORIES

Identification Interrogatories

**Ordinary Interrogatories Of Limited Value,
Give Away More Than They Obtain**

**Save Bulk For Trial Preparation
(Send 30-40 Days Before End Of Discovery
Period)**

Help Identify The Particular Types And
Categories Of Relevant Documents For
Requests For Production

Combined Sets Of Discovery

Group Concepts To Aid The Court
In Determining Scope

*Perez v. Pittsburg Independent School
Dist.*
Slip Copy, 2012 WL 3112333 (E.D.Tex.)

REQUESTS FOR PRODUCTION

- Specificity**
- Scope**
- Incrementalism**
- Sub-parts**
- Proper Responses Under Rule 196.2**

BATES STAMPING

GOOD REQUESTS

In re Waste Management of Texas, Inc.,
Not Reported in S.W.3d, 2011 WL 3855745
(Tex. App.- Corpus Christi)

"ANY AND ALL"

Chamberlain v. Cherry,
818 S.W.2d 201
(Tex. App. Amarillo 1991, orig. proceeding)

In re Patel
218 S.W.3d 911
(Tex.App.-Corpus Christi,2007)

**OK IF TIED TO A PARTICULAR TYPE OR
CATEGORY OF DOCUMENTS**

**Marshaling
Overbroad
Cumulative And Unduly Burdensome
Irrelevant
Immigration
Pre-existing Conditions
Federal Income Tax Returns
Financial Records
Paid & Incurred**

No Recourse When Responding Party Answers That It Performed A Diligent Search And **Cannot Locate Any Responsive Items** Or The Only Responsive Items That Could Be Found Have Been Produced.

REQUESTS FOR ADMISSION

Drafting Must Be Simple And Concise
No Conjunctives Or Disjunctives

Ultimate Issue OK
Pure Questions Of Law Improper
NOT OK
Facts To Law OK
Facts OK

ONLY ADMISSIONS ARE ADMISSIBLE,
NOT DENIALS
“MIRROR REQUESTS”

“THE DEFENDING IS CONTENDING. . .”

**NOTICES TO TAKE ORAL DEPOSITIONS
REQUESTS FOR PRODUCTION**

202 CONSIDERATIONS

DEPOSITIONS ON WRITTEN QUESTIONS

Same Considerations As Pertain To
Requests For Production

**REQUESTS TO ENTER PROPERTY AND FOR
MEDICAL/PSYCHOLOGICAL EXAMS**

DISCOVERY TO NON-PARTIES

DISCOVERY OF AND TO EXPERTS

LAY EXPERTS

NON RETAINED EXPERTS

**Discovery Of Consultants Whose Work
Product Has Been Reviewed Ok**

**Facts Possessed By Consulting Only
Expert?**

TECHNIQUES

Combined Sets Of Discovery

Discovery With The Original Petition

Discovery Exhibits

OBJECTIONS AND MOTIONS

OBJECTIONS

Make Them Concise And Relevant

**EVIDENCE
BALANCING**

MOTIONS

COMPEL

PROTECTION

SANCTIONS

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