



ON-DEMAND: DISCOVERY MASTERS CLASS: USING THE RULES TO ENFORCE DISCOVERY

AAJ Headquarters | Washington, D.C.

Recorded on: November 9 – 10, 2021

PARTICIPANT AGENDA

Sponsored by: Synergy Settlement Services

TUESDAY, NOVEMBER 9, 2021

LECTURE 1:

9:15 – 10:00 a.m.

DISCOVERY PLANNING: WHAT DO YOU REALLY WANT?

- Purpose and Scope of Discovery
 - Rule 1: Just, Speedy, and Efficient
 - Rule 26: Reliance (Post-2015 Amendments)
 - Rule 26: Proportionality
 - Proportionality Standards
 - Case Law Interpreting the Elements
- Crafting Bullet Proof Discovery—Avoid the Excessive Approach
 - Avoiding Potential Evasion
 - Making it Clear, Relevant, and Proportional

Carl L. Solomon

Solomon Law Group, LLC

Columbia, SC

LECTURE 2:

10:00 – 10:45 a.m.

WHAT ARE THE RESPONDING ATTORNEY'S DUTIES?

- Model Rules of Professional Conduct
 - Rule 1.1, 1.3, 3.3, and 3.4
 - Obstruction Prohibited—Considerations for Written Discovery and Depositions
- Rule 26: Attorney's Legal Duties
 - Duty to Behave Responsibly
 - Duty of Oversight
 - Duty to Fully Respond
 - Duty to Timely Respond/Supplement
 - Duty to Investigate, Understand and Preserve ESI
 - Rule 26(g): Attorney's Signature on Discovery Responses
 - Attorney Liability for Withholding Evidence

Carma L. Henson

Henson Fuerst, PA

Raleigh, NC



LECTURE 3:

11:00 – 11:45 a.m.

CONFIDENTIALITY PROTECTIVE ORDERS: ARE THEY REALLY NECESSARY?

- Elements
- Good Cause Requirement
- Stipulated—Federal Form
- Alternative Temporary Confidentiality agreements
- Timelines of Motion
- Objective Waiver
- Contested Request for Confidentiality

Laraclay D. Parker
Golden Law Office
Lexington, KY

LECTURE 4:

11:45 a.m. – 12:30 p.m.

COMMON OBSTRUCTIVE TACTICS

- Preamble Objections
- Boilerplate Objections
- Qualified Answers
- Objecting in Part
- Rule 34: Requests for Production
 - Possession v. Control
- False or Misleading Responses
 - Possession
 - Discovery is Continuing
- Consequences for Non-Timely Responses

Morgan G. Adams
Truck Wreck Justice and Seattle Truck Law
Seattle, WA

LECTURE 5:

1:30 – 2:30 p.m.

RULE 34: ELECTRONICALLY STORED INFORMATION (ESI)

- How to Access the Data
- Scope of Discovery and Proportionality
 - What's Technologically Feasible
 - Costs of Preserving, Retrieving, Reviewing
- Preservation Obligations and Preservation Orders
- Obstruction Techniques
- Meet and Confer for ESI/ESI Custodian
- Tiered Production
- Cost-Shifting
- Inadvertent Production
- Spoliation and Sanctions
- Email, Smartphones, Internal Communication Models
- Getting What You Need

Laraclay D. Parker
Golden Law Office
Lexington, KY



LECTURE 6:

2:30 – 3:15 p.m.

WHEN IS A PRIVILEGE OBJECTION VALID?

- What is Privileged? Facts vs. Communication
- When is Work Product Discoverable?
- 30(b)(6) Preparation Privilege Waiver
- Expert Draft Documents
- Peer Review and Quality Assurance: Elements
- Privilege Log: Rule and Required Elements

Camille Godwin

Law Office of Camille Godwin, LLC

Marietta, GA

LECTURE 7:

3:45 – 4:45 p.m.

MANAGING OBSTRUCTION: MAKING IT EASY FOR THE JUDGE

- Preempting Objections with Rule 30(b)(6)
- Obstruction Spreadsheet
 - Request, Objection, Evidence, Ruling
- Meet and Confer
 - Legal Requirements
 - Management with a Spreadsheet
 - Affidavit
 - Professionalism Works!

Mark R. Kosieradzki

Kosieradzki • Smith Law Firm, LLC

Minneapolis, MN

Carma L. Henson

Henson Fuerst, PA

Raleigh, NC



WEDNESDAY, NOVEMBER 10, 2021

LECTURE 8:

9:05 – 10:00 a.m.

DEALING WITH 30(b)(6) OBJECTIONS AFTER THE 2020 RULE CHANGE

- The *Meet and Confer* Requirement
- What Happens When They Object?
- Answers to Common Objections

Mark R. Kosieradzki

*Kosieradzki • Smith Law Firm, LLC
Minneapolis, MN*

LECTURE 9:

10:00 – 11:00 a.m.

DEALING WITH DEPOSITION OBSTRUCTION

- Deposition Rules of Engagement
- Ethics Rules
- Prohibited Conduct
- Witness Coaching
- Consultations with Witness and Lawyers
- Instructions Not to Answer
- Required Objections
- Solutions

Carma L. Henson

*Henson Fuerst, PA
Raleigh, NC*

LECTURE 10:

11:15 a.m. – 12:00 p.m.

ENFORCING DISCOVERY THROUGH SANCTIONS

- Motions to Compel
- Sanctions
- Walking Through the Mechanics
- What Sanctions are Available

Morgan G. Adams

*Truck Wreck Justice and Seattle Truck Law
Seattle, WA*

12:15 p.m.

PROGRAM ADJOURNS