

Discovery Disputes

1. *Resolution of Discovery Disputes; Required Telephonic Conference*

If a discovery disputes arises,¹ an aggrieved party may notify the Court of the dispute by submitting a letter or e-mail (a “Communication”), with a copy to counsel for the opposing party(ies) and to any unrepresented part(ies) by the most expeditious means available to the sender. The Communication must comply with the Court’s policy regarding communication with Chambers,² must demonstrate compliance with Federal Rule of Civil Procedure 37, applicable herein by and through Federal Rule of Bankruptcy Procedure 7037 (in particular, the obligation to confer regarding discovery disputes), and must provide sufficient information and/or documentation regarding the dispute to permit a meaningful telephone conference between the parties and the Court. The Communication should be succinct and should describe the issue for decision with as little argument as is possible and without disparagement of the opposing party(ies). The opposing party(ies) may submit a reply to the Court, with a copy to counsel for the opposing party(ies) and to any unrepresented part(ies) by the most expeditious means available to the sender, although (depending on the circumstances) the Court may schedule and/or hold the required telephonic conference prior to receiving a reply. If a party or its counsel does not cooperate in scheduling the required telephonic conference, the Court may proceed with the conference with the available party(ies) and counsel.

As permitted by Bankruptcy Local Rule 7037-1(e), **no party to an Adversary Proceeding may file a motion to compel, a motion for a protective order, or a motion for sanctions (any such motion a “Discovery Motion”) without first having discussed the matter with the Court in a telephonic conference.** A Discovery Motion that does not comply with Fed.R.Civ.P. 37, as incorporated by Fed.R.Bankr.P. 7037, or that precedes an initial conference with the Court as required by these procedures, **will be denied without a hearing.** The requirement of the telephonic conference prior to filing a motion to compel, however, does **not** apply to **the complete failure to respond** to discovery requests, and in such circumstances the telephonic conference requirement is inapplicable.

The requirement of a prior telephonic conference also does not apply to a non-party that wishes to file a motion for a protective order regarding a subpoena.

2. *Deposition Conduct; Court Availability for Resolution.*

Parties and their counsel may sometimes engage in conduct during depositions that is detrimental to the fact-finding process and to the just, speedy and inexpensive determination of Adversary Proceedings. This conduct can often be avoided or mitigated by access to the Court in real time during the deposition. Consequently, if a participant in a deposition believes that another participant is engaging in particularly egregious conduct during the deposition, that party may pause the deposition and contact the Court by telephone (404-215-1010) for an immediate resolution of the dispute. Prior to pausing the deposition, the aggrieved party should engage in reasonable efforts to cause the conduct to cease and should inform the party engaged in such conduct that if it does not cease that immediate telephonic access to the Court will be sought.

If the Court is not immediately available by telephone, the parties should continue with the deposition, continue to try to resolve the dispute themselves, and continue to endeavor to contact the Court regarding the dispute. The Court may assess monetary or other sanctions (i) against attorneys found to have engaged in egregious conduct during a deposition (and their clients), (ii) against attorneys who have asserted that egregious conduct has occurred when there is no reasonable basis for having asserted same (and their clients), (iii) against parties found to have engaged in egregious behavior at depositions or who have asserted that egregious conduct has occurred when there is no reasonable basis for having asserted same, and (iv) in other appropriate circumstances.

Without limiting the generality of the foregoing, conduct that may be the subject of this provision includes objecting to all or substantially all of the questions asked to a witness, regularly instructing the witness not to answer questions in the absence of any legitimate basis for doing so, engaging in multiple speaking objections that coach the witness as to the

¹ Disputes regarding conduct at a deposition arising at a deposition will be resolved via Item 2.

² That policy is set forth under the “General Information” on the Chambers web page.

answer, repeatedly asking the witness the same question after the question has already been asked and answered, or asking the witness questions regarding information of a personal nature that is not directly relevant to the litigation.