

# DISCOVERY STRATEGY FOR TRIAL



**Identifying and Preparing for The Things We Know, The Things We Don't Know  
And The Things We Don't Know We Don't Know:  
A Plaintiffs' Attorney's Perspective**

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## **KEYS TO SUCCESS**

**WHAT ARE THE SUBSTANTIVE ISSUES?**

**WHY SHOULD PLAINTIFF WIN?**

**HOW CAN PLAINTIFF LOSE?**

**A PLAN**

**TIMING**

**INITIATIVE**

**FOCUS**

**DISCIPLINE**

1. What is the case about? What are the existential elements?
2. Preservation letter
3. Hold letter
4. TRO
5. Rule 202 Depositions
6. Trial consultants
7. What is the most efficient/effective defense strategy?
8. Prepare the charge. Identify the issues and the elements of proof.
  - A. What are the substantive issues?
  - B. What is the substantive proof?
9. Appellate consultation.
10. Draft the pleadings. The pleadings are key; they define the scope of discovery;
11. Experts. Key opinions and key supporting documents
12. Themes
13. WHAT DO YOU REALLY NEED?
  - A. Relevancy
  - B. Proportionality
14. Hold Letters

15. Disclosures. Not to be treated lightly. Factual bases for pleadings and economic model. Also, expert opinions.
16. Motion for Pre-Trial Conference and Discovery Control Plan. Anticipate problems and address. Timeline. Federal Rule 26(f):
  - A. Joinder and Designation of Third Parties;
  - B. Amended pleadings;
  - C. Rule 26g and Proportionality
  - D. Limits on discovery;
    - 1) Number of interrogatories
    - 2) Number and duration of deposition
    - 3) DCR depositions
  - E. Scheduling depositions
  - F. ESI Discovery- proportionality
  - G. Discovery Disputes. Certificate of Conference. Lead Counsel.
  - H. Confidentiality Protective Orders
  - I. Expert reports
  - J. Expert production and depositions
  - K. Daubert challenges
  - L. DISCOVERY DEADLINE
  - M. Dispositive motions
  - N. Mediation
  - O. AUTOMATIC EXCHANGE OF TRIAL INFORMATION
    - 1) Trial Witnesses
    - 2) Exhibits
    - 3) Deposition excerpts
    - 4) Motions in Limine. Requests for Pre-trial Evidentiary Rulings
    - 5) Charge
  - P. Pre-Trial Conference
  - Q. TRIAL
  - R. Lock in deadlines.
17. Special Exceptions;
18. Identification Interrogatories.
  - A. Identify the types and categories of documents and things relevant to the issues pled.
  - B. Identify how electronic data is maintained.
19. Corporate Representative Depositions
  - A. Documents and Data.
    - 1) Identification
    - 2) Where kept
    - 3) How maintained
    - 4) Authentication
    - 5) Retention
  - B. Most knowledgeable individuals on substantive issues

- C. Contentions
- 20. Requests for Production.
  - A. Specificity of Requests
  - B. Specificity of Objections. Withholding on the basis of objections.
  - C. Specificity of Response
- 21. Self- Authentication
- 22. Request for Privilege Log
- 23. Depositions:
  - A. Timing
  - B. Corporate Representative Depositions
  - C. Experts
  - D. Number and Duration
  - E. Corrections
- 24. Dealing with Objections and Incomplete or Evasive Discovery;
  - A. Heller v. City of Dallas – Subject to boiler plate objections
  - B. Withholding
- 25. Motions to Compel
  - A. Relevancy
  - B. Specificity of objections
  - C. Waiver
- 26. Dealing with Privileges;
  - A. Privilege logs
  - B. Proof
- 27. Motions for Protection
  - A. Articulated Harm
  - B. Limits on discovery
  - C. Proportionality
  - D. Proof – Affidavits, documents themselves
- 28. Confidentiality Orders. Trade Secrets
- 29. Work Arounds
  - A. Discovery from Third Parties
  - B. Authorizations
- 30. Expert Disclosure
  - A. Reports
  - B. Motions to Reduce Opinions to Tangible Form;
- 31. Requests for Admissions. Deemed Admissions and Motions to Withdraw and Amend.
- 32. Requests for Examinations and to Enter Property
- 33. Motions for Sanctions. Spoliation.
- 34. Daubert Motions. Supplementation
- 35. Motions for Summary Judgment
  - A. Traditional
  - B. No Evidence

36. Supplementation. As soon as practical.
37. Motions for Continuance. Insufficient time for discovery?
38. Motions to Strike RTP
39. Trial Discovery 45 days before the discovery deadline.
  - A. Interrogatories
    - 1) Contention Interrogatories
    - 2) Trial Witnesses
    - 3) Catch all
  - B. Trial Witnesses
  - C. R4Ps
  - D. R4As
40. Pre-trial conference.
41. Rule 193.6 motions
  - A. Individuals with knowledge of relevant facts;
  - B. Claims and Defenses
  - C. Economic model
  - D. Testifying Experts and Opinions
42. ADDRESS AND RESOLVE DISCOVERY ISSUES PRIOR TO TRIAL, NOT DURING.
43. Rule 104 Hearing