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## **Discovery Plans Part 2: Are Stipulations Part of Your Discovery Plan?**

**By Katherine Gallo**

A useful tool that is too often overlooked is stipulations. Discovery is a very expensive process, especially in complex cases, but there are ways to streamline the process and be more cost effective. Below are some of the stipulations that you may want to consider:

**Agree on Service:** Agree to service by [fax \(pdf\)](#). [C.C.P. §1013(e) and (f)] Get everyone's e-mail address and agree to correspond by [E-Mail Service \(pdf\)](#). Better yet, agree to accept e-mail service of all pleadings and other documents except for motions. As for [motions \(pdf\)](#), consider agreeing that the moving party only need serve the full moving papers on the party to which the motion is being directed to. All other parties are served with the notice of motion only with the option of requesting a full set of moving papers. This procedure, commonly used in asbestos litigation, saves hundreds if not thousands of dollars on copying costs and service charges in multi-party litigation.

**Agree on a Discovery Time line:** Prior to the commencement of discovery, meet and confer with opposing counsel to agree on a discovery time line (i.e., exchange of documents within 90 days, written discovery commences on Day 91, depositions commences on Day 150, discovery closes 60 days before trial except experts, etc.).

**Agree on Early Expert Disclosure:** If the case is expert driven or more than five experts are going to be taken, consider moving the expert disclosure from 50 days before trial to 75, 90 or even 150 days before trial.

**Agree on a Protective Order:** If the case involves the exchange of sensitive information (i.e., privacy or trade secret materials), agree to a protective order before you commence discovery. If you need a neutral third party to help with all this, consider.

**Agree on How Document Production Should be Handled:** If the case is document intensive, agree on a document depository and a document handling and processing protocol. Come into the electronic age – require the documents be scanned (OCR) so that you and your experts can do more efficient and effective searches. Consider using document companies that will make the depository internet-accessible, which is quite common place now. These services allow you to decide which parties have access to which documents. Such a feature gives you, anyone in your office and your experts' access to the documents is 24/7 and you are not hunting around for the CD's.

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**Agree on a Discovery Referee:** If you anticipate that your case is going to need hands on case management and/or you anticipate having discovery disputes agree on a discovery referee and what role he or she will play in the case.

**Agree on an Electronic Discovery Referee:** If you anticipate that you are going to have electronic discovery issues, then research and agree on a referee who has the expertise on your case. Also, which company is going to do the retrieval for the Electronically Stored Information (ESI).

**Agree on a Mediator:** It is never too soon to start talking settlement. Talk to opposing counsel and select a mediator and a time line for the mediation. This is especially crucial if you have a complex case that requires a certain level of expertise.

If you cannot get the stipulations you need, then turn to the court at the Case Management Conference for help.

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