

Desperately Seeking Streamlining of Discovery

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On June 27, 2008, Superior Court Chief Justice Barbara J. Rouse issued a Proposed Standing Order on Written Discovery. The order provides for uniform definitions in discovery requests and sets forth specific guidelines for discovery objections. The order clearly sets forth the expectations of the responding lawyer. No longer will vague and general objections be tolerated, but rather the responding party will be obligated to identify a sound basis for the objection. The order however does not address a party's failure to comply with the order.

Some argue that such a change will increase litigation costs because attorneys and their clients will have to devote more time to answering discovery in good faith. In contrast however, the failure of the opposing party to provide complete answers to discovery often leads clients to incur additional legal expenses associated with filing motions to compel. As stated in *United States v. Procter & Gamble Co.*, modern instruments of discovery serve a useful purpose in that, together with pre-trial procedures, they make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958). Unfortunately, in practice, such full disclosure is rare. Therefore, while the order may serve to delineate discovery expectations in the Superior Court, it is doubtful that it will change the legal landscape as some anticipate. The Court accepted public comment on the proposed rule until August 15, 2008; however, there has yet to be a determination on whether the order will be adopted.

If you have any questions, please contact Sarah A. Bandomer, Esquire at (617) 770-2214 or sbandomer@smithbrink.com.

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