

Ethics in Discovery

1. Ethical Obligations when Conducting and Defending Depositions.

- Nevada Rules of Professional Conduct 3.4 Fairness to Opposing Party and Counsel
- Nevada Rules of Professional Conduct 4.4 Respect for Rights of Third Persons
- Nevada Rules of Professional Conduct 3.7 Lawyer as Witness
- NRCP 30(d)

NRCP 30(d)(1) "Any objection during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner..."

- NRCP 37(d) Failure of a party to attend own deposition is sanctionable conduct.

Case Law:

Mazzeo v. Gibbons, 2010 WL 3020021 (D. Nev. 2010)

Luangisa v. Interface Operations, 2011 WL 6029880 (D. Nev. 2011)

Foster v. Dingwall, 227 P.3d 1042 (Nev. 2010)

Club Vista v. Eighth Judicial District Court, 276 P.3d 246 (Nev. 2012)

2. Ethical Obligations When Identifying and Interviewing Witnesses.

- Nevada Rules of Professional Conduct 3.4, 4.4.
- Nevada Rules of Professional Conduct 4.1 Truthfulness in Statements to Others
- Nevada Rules of Professional Conduct 4.2 Communication with Persons Represented by Counsel
- Nevada Rules of Professional Conduct 4.3 Dealing with Unrepresented Person
- NRCP 16.1 "... a party must, without awaiting a discovery request, provide to other parties: (A) the name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information..."

Case Law:

Cronin v. Eighth Judicial District Court, 105 Nev. 635, 781 P.2d 1150 (1989)

Palmer v. Pioneer Inn. Assocs., 118 Nev. 943, 59 P.3d 1237 (2002)

3. Ethical Obligations When Answering Written Discovery and Serving Subpoenas.

- Nevada Rules of Professional Conduct 3.4: “A lawyer shall not: (d) In a pretrial procedure... fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.”

- NRCP 33

33(b)(4): “All grounds for an objection to an interrogatory shall be stated with specificity...”

33(b)(5): the party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

- NRCP 5: “...every paper relating to discovery required to be served upon a party unless the court otherwise orders...”
- NRCP 37(a)(2)(3): “For purposes of this subdivision an evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.”
- NRCP 37(d): Failure to serve answers to interrogatories or respond to request for inspection is sanctionable conduct.

Case Law:

Havas v. Bank of Nev., 96 Nev. 567, 613 P.2d 706 (1980)

No abuse of discretion for striking pleadings where a party failed to answer interrogatories.

Bahena v. Goodyear, 235 P.3d 592 (2010) (Bahena I)

Failure to provide proper discovery responses and verifications to answers to interrogatories constitute discovery abuses that justify striking an answer as to liability only.

Index

- 1- Nevada Rules of Professional Conduct
- 2- *Mazzeo v. Gibbons*, 2010 WL 3020021 (D. Nev. 2010)
- 3- *Luangisa v. Interface Operations*, 2011 WL 6029880 (D. Nev. 2011)
- 4- *Foster v. Dingwall*, 227 P.3d 1042 (Nev. 2010)
- 5- *Club Vista v. Eighth Judicial District Court*, 276 P.3d 246 (Nev. 2012)
- 6- *Cronin v. Eighth Judicial District Court*, 105 Nev. 635, 781 P.2d 1150 (1989)
- 7- *Palmer v. Pioneer Inn. Assocs.*, 118 Nev. 943, 59 P.3d 1237 (2002)
- 8- *Havas v. Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980)
- 9- *Bahena v. Goodyear*, 235 P.3d 592 (2010) (Bahena I)