STEPHENS ANDERSON & CUMMINGS

Let's Win This!

A Monthly Newsletter - What You Need to Know About Personal Injury Law

Having Trouble? Click Here to View as Webpage

October 2019 - Issue 20

And, just like that, the weather is cool and crisp.

Some might consider it a bit cold, in fact, for North Texas. Where we were logging temperatures ten degrees above normal, all of a sudden we're ten degrees below what you would expect for this time of year.

It just goes to show you: when it comes to Texas weather, "normal" is a word that doesn't have much significance.

Some folks might say the same about discovery in personal injury litigation. The difference is, you have a set of written rules to govern the discovery process and Mother Nature pretty much makes up her own rules.

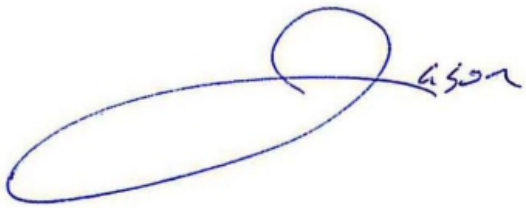
We're continuing our series on Discovery - the activity that always takes the most time and usually costs the most money in any lawsuit. If you're going to be involved in litigation, you're going to be involved in discovery. Knowing about the process will help you help your lawyers (us, that is) fight for all the justice you deserve.

This month, we start talking about the available tools and the ways in which the rules define - and allow the court to define - different plans for different cases. In the world of personal injury law, one size does *not* fit all.

So, pull that sweater a little tighter around your shoulders, snuggle in, and let's take a look at Discovery - Plans & Tools.

And if you get cozy enough that you drop off for a little snooze? We'll be here when you wake up, with answers to all of your questions about the world of personal injury law.

Thanks for reading!



p.s. - Forward this email to your friends and loved ones and tell them that they can get their own copies in the future by subscribing here:

Sign up to get Let's Win This! every month

The road thus far

So far in our Discovery series, we've talked about the overarching reasons why discovery exists - a process by which you can learn information about the facts

of the case, the other side's view of the matter, and details about the witnesses who are likely to be called to testify. (You can find that issue HERE.)

We've also talked about Requests for Disclosure – the method in the Rules that applies to any suit and about which no objections are permitted. (That issue is HERE.)

Now it's time to start diving into the other discovery tools available to lawyers as they go about preparing to win your case. The main ones are Interrogatories, Requests for Production, Requests for Admissions, and Depositions. Depositions are such a significant part of the process they will have a couple of issues devoted to them, alone.

But first, a word about plans

Litigation is an adversary process.

You may recall way back when we began talking about civil suits (the issue discussing what a tort is can be found HERE, in case you missed it), we saw how the point of personal injury cases is to obtain compensation for those injured or killed as a result of another's negligent conduct. In most cases, we're trying to pry money out of an insurance company. Insurance companies don't typically turn loose of funds without a fight.

A lawsuit is a kind of modern-day trial by combat. Lawyers have a professional obligation to represent their clients zealously and to the best of their ability. This scenario presents many opportunities for abuse, dirty tricks, and the temptation for entities like insurance companies to use their deep pockets to overwhelm an opponent of less extensive financial reserves. (We discussed this in Discovery Part 1.)

Not all lawyers who represent victims of negligence have the resources that we do here at Stephens Anderson & Cummings, and insurance companies are quick to take advantage of the disparity.

Historical abuse

Historically, there were few restrictions on how much a party to a lawsuit could do in the area of discovery. No matter what the amount in controversy was, no matter how big or small the case, the insurance company could use all of the available tools – interrogatories, requests for production, requests for admission, and depositions – as much as they wanted in order to drain your finances and defeat you by fatigue and attrition.

While the court has always had power to "sanction" a party for abusing the discovery process – that is, in essence, impose a fine for bad behavior – the cost of pursuing that course made doing so a catch-22 scenario.

In the past, the only way to curb this excess was to file a motion with the court and trek to the courthouse for a hearing – an expensive proposition in its own right. The only remedy for oppressive discovery was to incur additional expense to seek relief from the judge.

The question of precisely what constituted abuse and what kind of penalty was appropriate generated massive amounts of litigation expense.

The 21st century response

In 1999, however, things changed.

Since then, whenever a lawyer files a case, it must be assigned to one of three tiers or "levels" of discovery.

Without going through all of the details of the various plans, suffice it to say that, as the complexity of the case increases, the number of the level goes up. The highest level – number 3 – is one in which the court must enter a "discovery control plan" designed for the needs of the particular case.

Any of the parties can request that the judge enter a Level 3 order, or the court can do so of its own volition.

Typically, the lawyers for both sides will agree on an order. If they are unable to, the court will hold a hearing at which both sides can present their arguments about what discovery is appropriate, and the judge will make a decision and enter an order "tailored to the circumstances of the specific suit." (Rule 190.4)

Whatever level may be assigned to a case, you can be sure that all of the various tools will be used. Let's turn now to the first of those.

Interrogatories

Interrogatories are written questions from one party to a suit directed to another party to the suit.

They can be about "any matter that is not privileged and is relevant to the subject matter of the pending action . . . if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (Rule 192.3) The questions "may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the bases for the party's claims or defenses." (Rule 197.1) That's a pretty big umbrella.

Each interrogatory must be answered separately in writing, and the answers have to be made *by the party* under oath (i.e., sworn to in the presence of a

notary public). Rule 14, which allows affidavits to be signed either by a party or their attorney, does not apply to interrogatories.

In the old days, an imaginative lawyer could come up with dozens, sometimes *hundreds* of questions to send to the other side.

Now, in a case governed by a Level 1 discovery control plan, each side is limited to "no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents." Under Level 2, the number is 25. Also, under all of the levels, "[e]ach discrete subpart of an interrogatory is considered a separate interrogatory."

The court can change this limitation in a Level 3 order. If, however, the order does not *explicitly* increase it, the default limit is 25. So, the potential for abuse in sending interrogatories may not have been eliminated, but it has been significantly reduced.

If you're involved in a suit, expect to work with your attorneys on all of the discovery requests that the other side sends. Your attorney will be signing everything except the interrogatory answers, which you must sign. So, you will be working particularly closely with your lawyers on those answers.

Coming Up

In Discovery Part 2, we touched briefly on objections that lawyers like to make to discovery requests. Now, before we start looking at the other discovery tools, is a great time to dig a little deeper into the scope of discovery – what is and what isn't "discoverable" and the objections both sides are likely to make. That's where we'll pick up in the next installment of our Discovery series.

In the meantime, if you have questions about discovery or anything else related to personal injury law, give us a call, shoot us an email, or chat through the website.

Subscribe to Let's Win This!

Stephens Anderson & Cummings
Multi-Regional Representation

Fort Worth is our home and our home base. But when our clients need help, we're not about to let geography stand in our way.

In addition to our home office in Fort Worth, we maintain offices by appointment in Dallas, Weatherford, and Oklahoma City. Not only that, but we've taken steps to facilitate quick and effective representation of our clients in multiple regions and states.

Considering the various admissions of the partners, Stephens Anderson & Cummings covers all of the Texas state courts, Texas Federal District Courts, the state courts in Oklahoma and Colorado, and the Federal 5th Circuit Court of Appeals.

If you need us in states where we haven't been admitted, we know how and are willing to apply for and do what's necessary to gain temporary admission (*pro hac vice*) to those courts specifically for your case.

At SAC, we go the extra mile - literally!

Let's Win This!

Explore the Stephens Anderson & Cummings Website

WHY Stephens Anderson & Cummings?

Aggressive. Experienced. Trusted.

Righting wrongs for seriously injured people isn't just a job for us - it's our calling.

Fighting for seriously injured folks is what we do. And it's all we do.

If you want to make a will or form a corporation or conduct a business transaction, we can give you the names of some other lawyers to call.

But if you or a loved one have been seriously injured - or suffered a wrongful death in the family - we're your team. We're AV rated (that's the highest) and we have the drive, experience, and tenacity to stand toe-to-toe with anyone on behalf of our clients.

We're not "TV advertisers." We're real trial lawyers with a long track record of success.

We're not a "mill." We don't take every case that comes along. We understand that your circumstances are as individual as you are.

At Stephens Anderson & Cummings, every single client is unique; every single client is important. We pay personal attention to every single one.

Don't get lost in the shuffle.

Let Us Fight For You

Compare Our Credentials

Fellow Lawyers: We Value Your Referrals

At Stephens Anderson & Cummings, we appreciate that different lawyers have different areas of expertise. If your clients find themselves in a situation that falls within ours, we would be honored to work with you, helping them obtain justice - fighting for the best possible result.

We work hard, spare no expense, and pay referral fees promptly.

We know that your clients are important to you. We know that you represent them zealously in your area of practice. If we can't help them, we'll send them back to you.

Righting wrongs for those injured or killed due to the negligence or wrongful conduct of others is what we do. Trust us with your client's case and

Let's Win This!

Click here to learn more about referrals!

Get Help Now!

817.920.9000

Toll Free - 877.920.9009

Principal Office - Fort Worth - 4200 W Vickery Blvd. - Fort Worth, TX 76107

Weatherford Office* - 123 Dallas Avenue - Weatherford, TX 76086

Dallas Office* - 3131 McKinney Avenue - Suite 600 Dallas, TX 75204

Oklahoma City Office* - 3030 Northwest Expressway , Suite 200, #130
Oklahoma City, OK 73112

*By appointment only

Or Shoot Us an Email

Click Here to Subscribe to Let's Win This!

Share *Let's Win This!* on Social Media

Share Tweet Share

Follow Stephens Anderson & Cummings on social media

Nothing in this newsletter is intended to be, nor should it be taken as, legal advice.
Every case is different. We can't guarantee results. But we do promise to fight for the best result possible.

Newsletter developed by DBWordcraft