

# WEINSTEIN LAW FIRM, LLC

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## Welcome Message to Opposing Counsel from Marc E. Weinstein

As we begin to work together, I offer a brief overview of my approach to litigation that I hope you will find helpful. I take great pride in maintaining collegial relations with opposing counsel and am proud of the fact that many referrals have come from attorneys against whom I've litigated. Although I am committed, of course, to zealously representing my client, I understand you are similarly committed to your client and I pledge to cooperate so that you may have a full and fair chance to defend your client's interests. Generally, my approach to discovery, trial and professional courtesy is set forth below:

### **1. Communications**

E-mail is the quickest way to get in touch with me. Usually I am at my office in the afternoons and can speak with you by telephone during those hours. If matters are moving particularly fast, or items are otherwise time-sensitive, I will provide my cell phone number.

### **2. Correspondence**

I welcome receipt of all correspondence and documents by e-mail. I normally send everything exclusively via e-mail, but if you need it sent by snail mail I will be happy to oblige.

### **3. Discovery**

I try to be very accommodating in considering and responding to discovery requests. I realize you need to thoroughly explore topics related to liability and damages, and my approach reflects this understanding.

#### **a) Written Discovery**

In responding to your written discovery requests I try to strip out all the legalese and get right to the point. I urge you to do the same.

Normally when I respond to your document requests I will also attach the documents (scanned and numbered) in .pdf.

If you send interrogatories, please don't ask the same questions during

deposition.

Normally I will agree to a Confidentiality Agreement wherein private documents are protected from disclosure outside the parameters of litigation.

b) Depositions

You will have a full and complete chance to depose my client. I ask for the same leeway when I take my depositions. The only time I really get into it with opposing counsel is when they ask my client a question, he or she answers it, and then later on opposing counsel mischaracterizes that earlier answer in posing another question. I am going to object when that happens and protect the integrity of the transcript. I am also going to explain the basis for my objection to protect the integrity of the transcript, although periodically defense counsel claims that this amounts to an improper “speaking objection.”

c) Discovery Disputes

I am convinced that lawyers skilled in the field of employment law should be able to avoid almost all discovery disputes. I will go beyond the requirements of Rule 26 to both accommodate your requests, and to try and hash out any disputes. If we can't get it resolved, and if the Judge's procedures allow it, I normally suggest one of us send a letter to the Court asking for a telephone conference.

4. Dispositive Motions

We all know the standard for summary judgment. Plaintiff (my client) is to have disputed facts viewed in her favor, and is to get the benefit of reasonable inferences from those facts. Please do not submit to the Court a fact that is squarely contradicted by other record evidence. Similarly, if I submit a fact that is not supported by the record evidence, or goes clearly beyond any reasonable inference, please bring it to my attention and I will correct it.

5. Settlement

Please keep in mind that before I file a case in federal court I have carefully reviewed it and believe it has substantial merit. If you think my case is flawed as a matter of law, please let me know and I will go back and take another look. If you are correct, I will acknowledge it and take whatever corrective action is necessary.

I believe it is a plaintiff's obligation to provide a settlement demand upon the request of opposing counsel and that the demand should reflect the strength of the case, the extent of the client's losses and projected losses, the nature of the company's conduct, and the amount of time invested in the case. As the case proceeds, I usually adjust

the demand consistent with these factors.

6. **Professional Courtesy**

I don't know that I've ever objected to a colleague's request for an extension to respond to a motion or brief. I doubt I ever would. Some pettifogger once opposed, unsuccessfully, my request for an extension to file an appeal brief and I will never forget it.

If I've made a mistake on something I've filed with the Court please let me know and I'll correct it.

Please copy me immediately on any correspondence you send to the Court, and I'll do the same.

Please do not ambush me at the end of discovery with documents and witness disclosures that should have been shared long before. I take great offense to that, and I will not do it to you.

Per Fed. R. Civ. P. 45(b), please copy me on any subpoena for documents at a reasonable time before it is served, and I'll do the same. **In particular, I ask that you not serve a subpoena for documents on my client's new employer until at least talking with me about it.** Perhaps we can get those documents for you without alarming the new employer. Keep in mind that if my client gets canned because the new employer gets concerned after receiving a subpoena, it only raises your client's exposure to back pay and front pay.

Finally, we all know that the practice of law often entails brutal deadlines, tons of tension and high stakes. Nonetheless, let's try to enjoy what we're doing and the broad use of humor often helps me do so. There will be the occasional use of wittiness, sarcasm and bad jokes.

I look forward to working with you.

**REV 6/13**