

District Court, El Paso County, State of Colorado Court Address: 270 South Tejon Street Colorado Springs, CO 80903-2203 Phone Number: (719)452-5000	<hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Div.:16 Ctrm: S370
ORDER FOR DISCOVERY PROTOCOL	

PLEASE BE ADVISED THE 4TH JUDICIAL DISTRICT IS A MANDATORY ICCES E-FILING DISTRICT FOR CIVIL CASES. ALL RESPONSES AND REPLY TO MOTIONS MUST BE LINKED THROUGH ICCES

The following discovery protocols shall guide all counsel in their conduct of written and oral discovery in this case. This protocol serves as this court's threshold effort to begin to "actively manage" all discovery disputes as required by *DCP Midstream LP. v. Anadarko Petroleum*, 803 P.3d 187, 1187, 1196 (Colo. 2013).

PREAMBLE

Counsel are reminded that all discovery responses shall be made in the spirit and with the understanding that the purpose of discovery is to elicit facts and to get to the truth. **The Rules of Civil Procedure are directed toward securing a just, speedy and inexpensive determination of every action. The discovery process shall not be employed to hinder or obstruct these goals nor to harass, unduly delay or needlessly increase the cost of litigation.**

These discovery protocols shall be considered a part of the responsibility of parties and counsel to comply with the Rules of Civil Procedure relating to discovery. Counsel are reminded to avoid filing pleadings with uncivil language directed against opposing counsel. Such unprofessional conduct will result in appropriate sanctions. *Martin v Essrig and Concerning Carroll* 2011 WL 3332655 (Colo. App. Aug. 4, 2011).

ALL DISCOVERY DISPUTES SHALL BE RESOLVED BY THE AGGRIEVED PARTY IMMEDIATELY CONTACTING THE DIVISION CLERK IN ORDER TO SET A DISCOVERY CONFERENCE WITH THE CLERK. NO WRITTEN DISCOVERY MOTIONS OR OBJECTION SHOULD BE FILED. PRIOR TO CONTACTING THE COURT, THE PARTY MUST FIRST CONFER WITH OPPOSING COUNSEL IN AN ATTEMPT TO RESOLVE THE ISSUE.

WRITTEN DISCOVERY

1. The parties should refrain from interposing repeated boilerplate type objections such as “overbroad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence” and other similar objections. In the event any such objections are made, they shall be followed by a clear and precise explanation of the legal and factual justification for raising such an objection. Additionally, if the objecting party otherwise responds to the discovery request but does so subject to or without waiving such an objection, that party shall describe with reasonable specificity the information which may be available but which is not being provided as a result of the objection raised.
2. When a responding party claims not to understand either a discovery request or the meaning of any words or terms used in a discovery request, that party shall affirmatively seek clarification of the meaning from counsel who served the discovery. A failure to seek such clarification shall be considered a violation of this Order for Discovery Protocol.
3. A discovery response which does not provide the information or material requested but promises to do so at some point in the future will be treated as the equivalent of no response unless the party so responding provides a specific reason for the information not being produced as required by the Rules of Civil Procedure, and **also** provides a specific date or event by which such information will be produced.
4. A response to a discovery request that does not provide the information or material requested but states that the party is continuing to look for or search for such information or material will be treated as the same as no response unless that party provides a clear description of where such information or material is normally located, who is normally in custody of such information or material, where the party has searched, the results of the search, as well as the identity of all persons who have engaged in such a search. The responding party shall **also** provide a clear explanation of the ongoing search and a specific date or event by which the search will be complete.
5. Whenever a party objects to discovery based upon a claim of attorney/client privilege, work product protection, patient/physician privilege or any other privilege or protection, that party shall produce a detailed privilege/protection log that includes at least the following for each such item for which privilege is claimed:

- a. The date of the document,
 - b. The number of pages of the document (Bates numbered if necessary),
 - c. The author of the document,
 - d. The specialty, if any, of the person authoring the document,
 - e. A description of the document, *e.g.* letter, treatment note, x-ray, patient history questionnaire, investigation report, etc. If a communication concerns the transmittal of another document, the communication and the document being transmitted must be listed separately and a specific privilege must be claimed as to each.
 - f. The recipient, if any, and
 - g. The specific nature of the privilege claimed with respect to each specific communication claimed to be privileged.
 - h. Any confidential information (social security numbers, etc.) is to be redacted if the document or the privileged information is ordered provided. The privilege log and records which Plaintiff agrees are discoverable must be produced within 30 days after service of the discovery request as required by C.R.C.P. 34(b). Each document for which a privilege is claimed must be listed in a separate line with all of the information above as it pertains to that document.
6. Counsel are reminded that the patient/physician privilege applies to communications between the physician and patient and not documents, *per se*. As such, when reviewing the records, Plaintiff's counsel must keep in mind that certain communications within a record may be discoverable while others or other portions within the same record may not be. For example, a medical provider may have taken a general medical history and inquired about the use of over-the-counter or prescription drugs. If Plaintiff denied or admitted having similar physical complaints or took medications to address symptoms similar to those at issue in this case, such information would be relevant to Plaintiff's claims in this case, and hence, the privilege would be waived. To the extent Plaintiff's medical records contain specific communications that are discoverable, Plaintiff has an affirmative duty to disclose those communications.

DEPOSITIONS

1. Depositions shall be conducted in compliance with the Colorado Rules of Civil Procedure. Discourteous, boorish, insulting or unprofessional conduct will not be tolerated. If requested, the Court will review transcripts of inappropriate conduct and impose sanctions to include fines, costs, and referral to disciplinary counsel. Counsel are encouraged to try to reach the Court on the phone if an impasse is reached that may require reconvening a deposition pending court order.

2. During all depositions, counsel shall adhere strictly to C.R.C.P. 30(d) (1) and (3). No objections may be made, except those which would be waived if not made under C.R.C.P. 32(d)(3)(B) (errors, irregularities), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the Court, or to present a C.R.C.P. 30(d)(3) motion (to terminate a bad faith deposition). Objections to form shall be stated: "Objection as to form." Any further explanation is inappropriate and prohibited unless specifically requested by the attorney asking the question.
3. There shall be no speaking objections. It is inappropriate and prohibited for an attorney, during the course of questioning, to advise a witness to answer "if you know," or "if you remember." It is similarly prohibited for an attorney during questioning to advise a witness not to speculate. All such questions shall be considered speaking objections. All deponent preparation shall be conducted prior to the commencement of the deposition and shall not take place during the course of the deposition. Other than the objections stated above, the deponent is on his or her own at the deposition and all preparation shall have occurred in advance.
4. It is appropriate for the deponent to request clarification of a question. However, it is not appropriate for counsel to do so.
5. A deponent and an attorney may not confer during the deposition while questions are pending. Similarly, neither a deponent nor counsel for a deponent may interrupt a deposition when a question is pending or a document is being reviewed, except as permitted by C.R.C.P. 30(d) (1).
6. Counsel shall refrain from excessive objections that have the purpose or effect of disrupting the flow of questioning or the elicitation of testimony.
7. Counsel may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under paragraph 3 of C.R.C.P. 30(d). Whenever counsel instructs a witness not to answer a question, counsel shall state on the record the specific reason for such an instruction, the specific question, part of a question or manner of asking the question upon which counsel is basing the instruction not to answer the question.
8. If there are any objections based upon privilege in a deposition or if a witness is instructed not to answer, the parties shall immediately contact the Division Clerk to set up a conference with the Court.

SCOPE OF DISCOVERY

Parties have a right to request all non-privileged reasonable and necessary discovery that is relevant to any claim or defense directly raised in the litigation subject to the proportionality analysis

found under C.R.C.P. 26(B)(2)(F). Parties may, either through agreement or with court approval for good cause, expand discovery to any matter relevant to the *subject matter* in the action. Good cause will be evaluated using the C.R.C.P. 26(b)(2)(F) proportionality factors:

- (a) Is the information sought cumulative or duplicative, etc.
- (b) Has the party seeking discovery "had ample opportunity by disclosure of discovery in the action to obtain the information sought"?
- (c) Does the burden or expense outweigh its likely benefit, taking into account:
 - (1) The needs of the case
 - (2) The amount in controversy
 - (3) The parties' resources
 - (4) The importance of the issues in the litigation
 - (5) Importance of the proposed discovery in resolving the issues

See *DCP Midstream, LP. v. Anadarko Petroleum* 303 P.3d, 1187, 1196 (Colo. 2013). The court has an obligation to take an "active role" in managing discovery.

BY THE COURT:



G. DAVID MILLER
District Court Judge

This Order has been served electronically in accordance with C.R.C.P. 121, section 1-26. A copy of this Order containing an original signature is on file in the Clerk's Office. Counsel are ordered to serve a copy of this Order and all other orders on any unrepresented parties.