

# **DISCOVERY BASICS**

JUDGE IRMA C. RAMIREZ

AND

VICTOR D. VITAL

# DISCOVERY – FRAUGHT WITH TRAPS



# TIMING



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- Start of discovery - new Rule 26(d)(2)
- Expedited discovery – only on a showing of cause. *El Pollo Loco, S.A. de C.V. v. El Pollo Loco, Inc.*, 344 F.Supp.2d 986 (S.D. Tex. 2004).
- Failure to timely object to discovery waives objections. *In re U.S.*, 864 F.2d 1153 (5th Cir. 1989). And watch out for deemed admissions under FRCP 36
- Motions to compel – watch out for the discovery deadline! *Days Inn Worldwide, Inc. v. Sonia Investments*, 237 F.R.D. 395 (N.D. Tex. 2006).

**OBJECTIONS**

**PROVE IT.**

# OBJECTIONS

- Objecting/resisting party must show “specifically how” the discovery is objectionable in a “nonconclusory fashion.” *Abraham v. Alpha Chi Omega*, 271 F.R.D. 556 (N.D. Tex. 2010).
- Objecting/resisting party “cannot attack the propriety of Plaintiff’s discovery requests with hypothetical arguments.” It must “produce specific evidence” as to “each challenged discovery request...” *Merrill v. Waffle House, Inc.*, 227 F.R.D. 475 (N.D. Tex. 2005).
- “A mere statement by a party that a request is ‘overly broad and unduly burdensome is not adequate to voice a successful objection.’ *SEC v. Brady*, 238 F.R.D. 429 (N.D. Tex. 2006) (“A party asserting undue burden typically must present an affidavit or evidentiary proof of the time and expense involved in respond to the discovery request.”)

# OBJECTIONS



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- Burden-shifting approach or no burden-shifting?—that is the question.

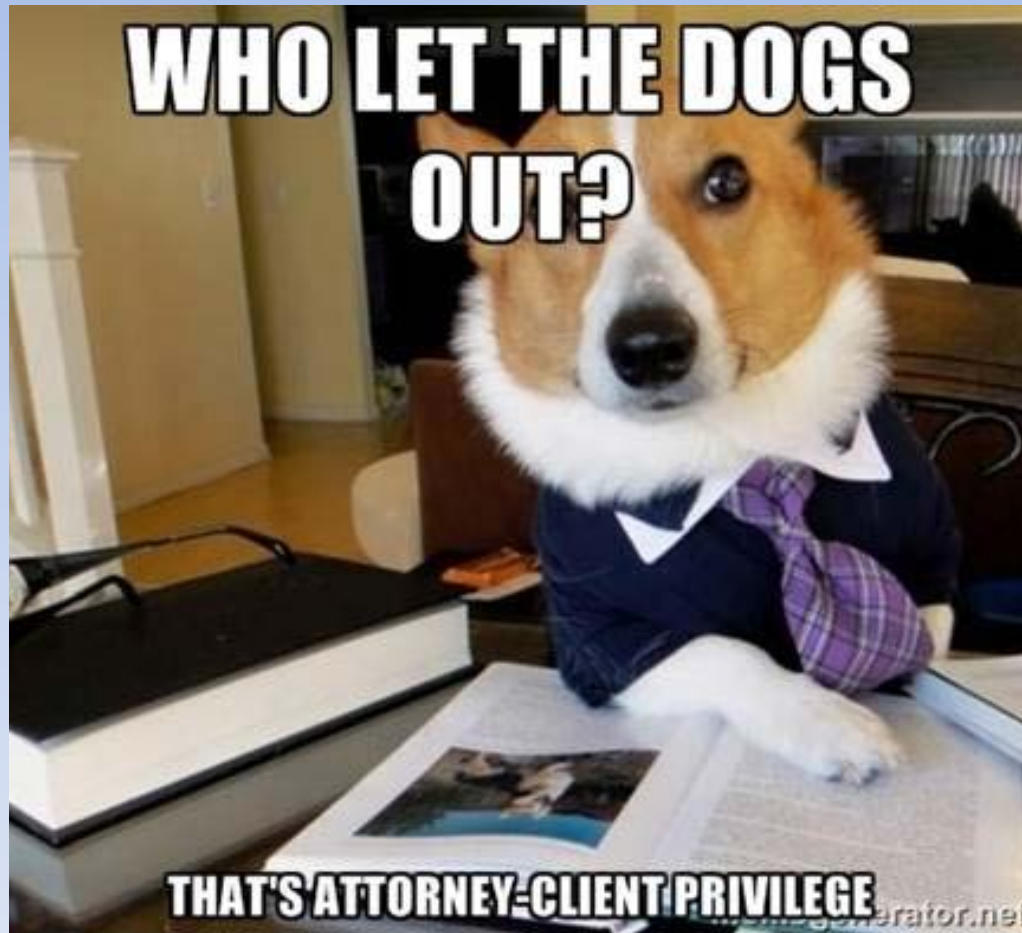
– *EEOC v. Renaissance III Organization*, 2006 WL 832504 (N.D. Tex. 2006) (party seeking discovery has the burden of establishing its relevance) and *Abraham v. Alpha Chi Omega*, 271 F.R.D. 556 (N.D. Tex. 2010) (When the requesting party meets its burden to show requested discovery’s relevance, “the burden shifts [to the objecting/resisting party] to show why the discovery is irrelevant, overly broad, or unduly burdensome or oppressive...”).

**VS.**

– *Merrill v. Waffle House, Inc.*, 227 F.R.D. 475 (N.D. Tex. 2005) (Burden-shifting approach “is not controlling in [the Fifth Circuit],” so the party objecting/resisting has the burden to show the discovery is irrelevant).



# PRIVILEGE ISSUES



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*In re Royce Homes, LP*, 449 B.R. 709 (S.D. Tex. 2011).

Date	Description	Author	Addressee(s)	Other Recipients	Privilege Claimed	Capacity	Pages
12/30/2008	Email	John Ransom, Esq.	Michael Wilk, Esq.	John Speer	Attorney Client	Individual	1