

LAWYER

THE HILLSBOROUGH COUNTY BAR ASSOCIATION
TAMPA, FLORIDA | JANUARY - FEBRUARY 2015 | VOL. 25, NO. 3

USE OF CASE MANAGEMENT ORDERS IN CONSTRUCTION LITIGATION

Construction Law Section

As a construction litigator, you have likely seen your fair share of large, complex case management orders. Some orders are better than others, and although no order is perfect, below are provisions of case management orders that have proven very useful in complex construction cases.

Deposition Holds: These provisions specify days each month that parties hold open for depositions, and they are useful in scheduling the numerous

processing transcripts and keeping a running, sequential exhibit list. In doing so, the court reporting company will bring a copy of the list and exhibits to each deposition.

Using the same reporting company reduces confusion during depositions, motion practice, and, ultimately, trial.

Set Hearing Times: Pre-scheduling hearing times with the court, and allowing any party to notice motions or matters within those times, prevents the nightmare of trying to coordinate dates and times with numerous attorneys and promotes the expeditious hearing and resolution of motions.

Although no case management order is infallible, these elements have proven useful in tailoring the order to the needs of each case.

include a provision requiring the plaintiff to provide the order to new parties within a certain timeframe of the new parties appearing in the action.

Mediation:

Recently, Judge

Paul L. Huey of the Thirteenth Judicial Circuit has proposed a standard Mediation Referral Order that may soon be incorporated into many case management orders. This mediation order includes useful provisions such as requiring carriers to disclose coverage issues before mediation and potentially requiring coverage counsel to attend mediation, if necessary. The order also creates a Mediation Organizing Committee to handle

depositions necessary for complex construction disputes (usually involving a large number of deponents). Without deposition holds, it is near impossible to schedule all depositions at mutually agreeable times for all parties involved. The most successful deposition hold provisions also mandate notice periods, which allow the holds to be released if no depositions are noticed within a specific timeframe. This notice period allows attorneys to keep calendars in check and prevents parties from being “blind-sided” by depositions without time to prepare.

Court Reporter and Exhibit Requirements: Ordering the use of a single court reporting company helps significantly in

Project File Production:

Construction cases are usually document-intensive, and numerous requests for production will be filed in the course of discovery. Ordering all parties to produce their project files within a certain timeframe reduces discovery filings and facilitates parties efficiently obtaining all necessary documents. This approach, similar to initial disclosures in federal court, greatly increases the efficiency of the discovery process and typically reduces fees/costs associated with formal discovery.

Newly Added Parties:

Frequently, complaints are amended by adding new parties after entering a case management order. Therefore, it is advisable to

mediator selection, scheduling, format, and to determine discovery necessary prior to mediation. At this time, it is not clear whether the mediation order will become a standard for construction litigation; however, its contents and intent are very useful in managing mediation, an extremely important aspect of construction litigation.

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