



## **REPORT ON DISCOVERY DISPUTE FORUMS**

Last year, the Judicial Administration Section sponsored a series of regional Discovery Dispute forums throughout the State to gain an understanding of the regional differences among the Circuit Courts in how discovery disputes are presented to and resolved by the courts. In each forum five factual scenarios were presented by participating judges and a discussion ensued between members of the bench and bar concerning those scenarios as well as how those and other discovery disputes were handled and resolved in the various jurisdictions.

Attached is a report prepared by the Section Council summarizing the jurisdictional variations in discovery dispute practices. If you have information to update or supplement the information in this report, please contact John A. Bourgeois at (410) 752-6030 or [jbourgeois@kg-law.com](mailto:jbourgeois@kg-law.com).

The Judicial Administration Section Council is proud that the Maryland State Bar Association Board of Governors selected the Discovery Dispute forum project for the Presidential Best Section Project for the Members award, which was presented at the annual meeting in Ocean City on June 19, 2004. The Council would like to express its gratitude to Judge Diane Leasure (Howard County), Judge Kathleen G. Cox (Baltimore County), Judge William Spellbring (Prince George's County), Judge Lynne Battaglia (Court of Appeals), as well as other judges and members of the bar whose participation in the forums made them so successful.

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## SURVEY OF DISCOVERY PRACTICES

### 1. Are cases specially assigned?

Allegany Co.	Yes.
Anne Arundel Co.	No, with the exception of business and technology.
Baltimore City	Only business and technology cases.
Baltimore Co.	No, except for complex cases.
Calvert Co.	No.
Carroll Co.	Yes.
Charles Co.	Yes.
Frederick Co.	No, except for complex cases, which are defined as four or more days, and all professional malpractice cases.
Garrett Co.	Yes, single judge county.
Harford Co.	Generally, no.
Howard Co.	Yes.
Prince George's Co.	Yes.
St. Mary's Co.	Yes.
Washington Co.	Only those that are four or more days long. Cases that are three or less days long are not assigned to a particular judge until 45 days before trial.

### 2. Are discovery matters assigned to a single judge?

Allegany Co.	Yes, the judge assigned to the case handles all discovery matters.
Anne Arundel Co.	No. All discovery disputes are referred to the Chambers Judge.
Baltimore City	Two judges hear all discovery matters – Judge Kaye Allison and another judge assigned to the civil rotation share this duty on three-month rotating basis.

Baltimore Co.	No, except for specially assigned cases.
Calvert Co.	No.
Carroll Co.	Yes, the judge assigned to the case handles all discovery matters.
Charles Co.	No.
Frederick Co.	No, except for specially assigned cases.
Garrett Co.	Yes, single judge county.
Harford Co.	Judge Carr handles all discovery disputes.
Howard Co.	Yes, the judge assigned to the case handles all discovery matters.
Prince George's Co.	Yes.
St. Mary's Co.	No.
Washington Co.	In cases in which a judge has been assigned (those that are four or more days or those that are within 45 days of trial), all discovery disputes will be referred to the assigned judge, All other discovery disputes will be referred to that day's motions judge.

**3. Are hearings granted on discovery motions?**

Allegany Co.	Occasionally, upon request and when the issues cannot be resolved by a review of the pleadings.
Anne Arundel Co.	Will attempt to resolve disputes without a hearing. A conference call with counsel may be held for this purpose. If necessary, a hearing will be scheduled.
Baltimore City	Hearings are granted at the judge's discretion and typically only if there is a complex discovery issue or if it is likely that monetary sanctions or other sanctions that could be dispositive of a case or claim are being considered.

Baltimore Co.	If a hearing is requested, the motion is set in on a monthly motions docket. However, the judge assigned to that docket may find that no hearing is necessary and issue a written order in advance of the hearing. If no hearing is requested, the matter is sent up to the Chambers Judge for review and ruling once the response time has expired.
Calvert Co.	Only when necessary as determined by the judge.
Carroll Co.	Sometimes – it depends on the complexity of the issues. Judges try to resolve discovery issues without a hearing.
Charles Co.	Only when necessary as determined by the judge.
Frederick Co.	Rarely.
Garrett Co.	Yes.
Harford Co.	If requested, Judge Carr then determines the need for a hearing.
Howard Co.	Not always – it depends on the complexity of the issues. Some issues are decided on the filings; in other instances, the judge may try to resolve the issue via conference call with counsel.
Prince George's Co.	Only when necessary as determined by the judge.
St. Mary's Co.	Only when necessary as determined by the judge.
Washington Co.	Most discovery disputes are resolved without a hearing. If it is determined that a hearing is necessary, the case will be referred to the Assignment Office to schedule a hearing. If a hearing is scheduled, it can be held in court or telephonically (may or may not be recorded).

**4. Are Scheduling Order deadlines strictly enforced?**

Allegany Co.	The goal is to require compliance, recognizing that each case has to be examined on its own merits.
Anne Arundel Co.	Generally, yes.
Baltimore City	Generally, yes.
Baltimore Co.	Basically, yes.

Calvert Co.	Enforced, but not so strictly.
Carroll Co.	It depends on the nature of the requested modification and whether the requested modification will result in the postponement of the trial. A motion must be filed to modify a Scheduling Order and may not be granted if it will result in the postponement of the trial.
Charles Co.	Enforced, but not so strictly.
Frederick Co.	Basically, yes.
Garrett Co.	Yes.
Harford Co.	Generally, yes.
Howard Co.	It depends on the nature of the requested modification and whether the requested modification will result in the postponement of the trial. A motion must be filed to modify a Scheduling Order and may not be granted if it will result in the postponement of the trial and good cause for the postponement is not shown.
Prince George's Co.	Enforced, but not so strictly.
St. Mary's Co.	Enforced, but not so strictly.
Washington Co.	Scheduling Orders are expected to be followed unless counsel agree to extend the deadlines. A motion to extend deadlines is not required. Failure to complete discovery is not cause, in the interests of justice, for the case to be postponed.

**5. Can Scheduling Order deadlines be modified simply by agreement of counsel?**

Allegany Co.	Yes, so long as it does not affect the trial date; otherwise, the modification has to be approved by the assigned judge.
Anne Arundel Co.	Yes, so long as they do not affect the pretrial conference date. If a modification would affect the pretrial conference date, modifications would require a court order.
Baltimore City	Counsel should seek approval of agreements by the court.

Baltimore Co.	The preferred practice is to confirm and seek approval of any such agreement from Judge Turnbull, as the Administrative Judge. Any proposed change that would impact the trial date must be approved by Judge Turnbull.
Calvert Co.	Depends on the reason. Must be approved by the judge.
Carroll Co.	A motion is required to modify a Scheduling Order. If counsel agree to the requested modification, the request will generally be granted unless it results in a postponement of the trial.
Frederick Co.	Yes, except that a change of the trial date or any modification that would prohibit or inhibit mediation requires a court order.
Garrett Co.	No.
Harford Co.	The preferred practice for modification of deadlines by counsel is to confirm them in writing with a copy submitted to the court.
Howard Co.	A motion is required to modify a Scheduling Order. If counsel agree to the requested modification, the request will generally be granted unless it results in a postponement of the trial and good cause for the postponement is not shown.
Prince George's Co.	Depends on the reason. Must be approved by the judge.
St. Mary's Co.	Depends on the reason. Must be approved by the judge.
Washington Co.	Yes, so long as the modification does not postpone the trial date.

**6. Are monetary sanctions awarded for failure to file timely responses to discovery?**

Allegany Co.	Occasionally.
Anne Arundel Co.	Only in rare cases.
Baltimore City	Monetary sanctions may be awarded for violations for failure to file timely responses.
Baltimore Co.	It is within the discretion of the judge to whom the motion is assigned, and practices vary. Instances of repeated failures to comply are those in which monetary sanctions are more likely to be granted.

Calvert Co.	Within discretion of reviewing judge.
Carroll Co.	The issue of attorneys' fees is often reserved until trial.
Charles Co.	Within discretion of reviewing judge.
Frederick Co.	Yes.
Garrett Co.	If a hearing is held, "loser pays."
Harford Co.	The issue of monetary sanctions is often held in abeyance for determination and award if there are further issues of non-compliance.
Howard Co.	The issue of attorneys' fees is often reserved until trial. If there is a continuing pattern of discovery abuse, monetary sanctions may be awarded at the time the particular motion is ruled upon.
Prince George's Co.	Yes.
St. Mary's Co.	Within discretion of reviewing judge.
Washington Co.	Sometimes.

**7. Is there a procedure for immediate review of discovery issues arising in deposition?**

Allegany Co.	There is no established procedure. Upon a showing of need, the assigned judge will make himself available to consider the issues expeditiously.
Anne Arundel Co.	Yes. Counsel should contact the Chambers Judge.
Baltimore City	Counsel can contact the discovery judge assigned to that case to request immediate review, which will only be granted in the case of some compelling exigency.
Baltimore Co.	No established practice in place.
Calvert Co.	No.
Carroll Co.	No.
Charles Co.	No.
Frederick Co.	No established practice in place.

Garrett Co.	No established practice in place.
Harford Co.	No.
Howard Co.	There is no established practice in place. Some judges will resolve the issue during a conference call with counsel.
Prince George's Co.	Yes, call to Judge Smith.
St. Mary's Co.	No.
Washington Co.	No. If the case is specially assigned, counsel can try to contact the judge's chambers; otherwise will need to attempt to contact that day's motions judge.

### **Scenario # 1**

The plaintiff files a timely notice to take the defendant's deposition. The defendant's counsel refuses to produce his client for a deposition until the plaintiff files responses to the defendant's interrogatories and request for production of documents, both of which are overdue.

2-401(b)

2-403(a)

### **Scenario #2**

The wife in a domestic relations case files a request for production of documents, including production of all bank account and credit card statements for the past two years. The husband does not produce any bank account or credit card statements claiming that he has no such documents in his possession.

Kelch v. Mass Transit, 287 Md. 223 (1980)

2-421(b) Interrogs.                      2-311(f)

2-422(a) Res. Prod.                      2-510(d)

### **Scenario # 3**

The attorneys call the judge during the deposition of a nonparty witness, who is not represented by counsel. The plaintiff's attorney states that the defendant's attorney is instructing the witness not to answer certain questions.

DISCOVERY GUIDELINES      Title 2 Chapter 400 of Rules Guideline  
8(f)

Estelle Dewin Garde v Benjamin Fine T/A G.I Veterans Taxicab Assoc.

### **Scenario #4**

The defendant has failed and/or refused to file responses to the plaintiff's Interrogatories. The plaintiff's attorney files a motion to compel. The judge grants the motion and orders the defendant to file responses within 15 days. No responses are filed.

2-433(a)

2-311(d) & (f)

1-204(b)

**Scenario #5**

**Pursuant to the provisions of the Scheduling Order entered in the case, the plaintiff provides an identification of the expert witnesses he intends to call to testify at trial as well as providing the required information regarding the opinions to be rendered by each such expert. One month before trial, the plaintiff identifies a new expert witness.**

**Dorsey v. Nold, 362 Md. 241 (2001)**

**Rule 2-504**

**Rule 2-402(f)**

**Klein v. Weiss, 284 Md. 36 (1977)**

**Giant Food v. Satterfield 90 Md. App. 660 (1992)**

**Rule 1-204(b)**