

2013 ECCL Survey

Question 1

How many years have you practiced in Washington State?		
Answer Options	Response Percent	Response Count
0--5 years	16.1%	84
6--10 years	13.2%	69
11--15 years	14.0%	73
16--20 years	11.1%	58
21--30 years	19.6%	102
More than 30 years	25.9%	135
<i>answered question</i>		521
<i>skipped question</i>		0

Question 2

Does your practice include litigation? As used throughout this survey, "litigation" means all stages of civil litigation from filing of a complaint to trial or settlement.		
Answer Options	Response Percent	Response Count
Yes	94.0%	490
No	6.0%	31
<i>answered question</i>		521
<i>skipped question</i>		0

Question 3

What percentage of your practice includes litigation?		
Answer Options	Response Percent	Response Count
0--10%	4.4%	21
11--20%	8.7%	41
21--30%	6.8%	32
31--40%	5.7%	27
41--50%	6.6%	31
51--60%	6.6%	31
61--70%	7.0%	33
71--80%	8.5%	40
81--90%	12.3%	58
91--100%	33.5%	158
<i>answered question</i>		472
<i>skipped question</i>		49

Question 4

Approximately how many years has your practice included litigation?		
Answer Options	Response Percent	Response Count
5 or fewer	14.6%	69
6--10 years	13.0%	61
11--15 years	14.2%	67
16--20 years	11.3%	53
21--30 years	20.2%	95
More than 30 years	26.8%	126
<i>answered question</i>		471
<i>skipped question</i>		50

Question 5

Has your litigation practice been primarily in Washington state?		
Answer Options	Response Percent	Response Count
Yes	89.6%	421
No	10.4%	49
If no, what other jurisdictions have you practiced litigation?		54
<i>answered question</i>		470
<i>skipped question</i>		51

If no, what other jurisdictions have you practiced litigation?

Oregon
 Minnesota,
 Wisconsin,
 Michigan
 DC, IL, Michigan

Ninth Circuit
 California, New
 York

Idaho
 Oregon, California

Oregon
 CALIFORNIA
 Arizona
 Alaska

Oregon, Idaho,
Utah

Illinois
Oregon

I also oversee
litigation in other
jurisdictions where
we do business --
Oregon, California,
Alberta, Oklahoma,
North Carolina,
Michigan,
Minnesota,
Wisconsin,
Georgia,
Massachusetts, New
Jersey

Oregon
California, NY, NJ
and many others.
Idaho, Oregon, Alaska
Virginia and California and Washington DC
federal courts in Idaho, Georgia, North Carolina, Florida

California
Alaska, District of
Columbia

Multi-state
Alaska, Hawaii,
California,
Kentucky, Nevada,
Arizona

none
IDAHO, OREGON,
UTAH, OHIO,
MINNESOTA,
CALIFORNIA,
COLORADO,
MONTANA

CA
Oregon
Hawaii, Arizona,
California,
Montana, Idaho ,
Texas, Oregon,
I worked in Massachusetts from 1998-2008.

Idaho, Oregon

Idaho
 Montana
 Oregon
 Minnesota
 Alaska, Oregon and
 California

georgia
 Arizona
 Idaho, Oregon,
 Montana, California
 and Ohio
 Maine and Vermont
 Oregon, multiple federal

Oregon
 Mainly Oregon
 Idaho
 NY and NJ
 Oregon, California,
 Colorado

Oregon
 Utah
 NJ, CO
 Oregon
 also hawaii
 Oregon
 E.D. Mich; E.D. Pa;
 S.D.N.Y; E.D.
 Louisiana
 OR, CA

Question 6

What areas of litigation comprise at least 25% of your practice?		
Answer Options	Response Percent	Response Count
Administrative Law	5.9%	27
Antitrust, Consumer Protection, and Unfair Business Practices	4.4%	20
Aviation Law	1.1%	5
Business Law	19.0%	87
Civil Rights Law	4.8%	22
Class Action	3.5%	16
Construction Law	8.8%	40

Creditor Debtor Rights	10.5%	48
Disability	2.0%	9
Guardianship and Elder Law	3.5%	16
Environmental/Land Use	3.7%	17
Family Law	25.2%	115
Insurance	15.8%	72
Intellectual Property Law	2.2%	10
International Practice	0.7%	3
Labor and Employment	16.0%	73
Landlord/Tenant	6.6%	30
Maritime Law	2.0%	9
Military Law	0.0%	0
Municipal	1.5%	7
Personal Injury, Wrongful Death, and Medical Malpractice	42.2%	193
Probate and Trusts	8.8%	40
Real Property	15.1%	69
Worker's Compensation	3.9%	18
Other (please specify)		41
	<i>answered question</i>	457
	<i>skipped question</i>	64

Other (please specify)

Social Security, DUI & Traffic
 Indian (Native American) Law
 Immigration
 Juvenile
 Collections
 Evictions
 Consumer Protection
 Employment
 rarely--Immigration law
 Criminal Law
 Appeals (I count that as litigation, although your question does not make that clear).
 Dependency/Juvenile
 Personal injury, other civil litigation, insurance coverage
 criminal law
 SEX ABUSE/ELDER ABUSE
 criminal
 criminal law
 Employment Discrimination - very different from labor law
 personal injury, product liability, medical malpractice
 Professional liability
 general liability, personnel, premises
 Indian law almost exclusively
 breach of contract

Tribal
 State and Local Taxes
 Indian Law
 gaurdianships
 Products Liability
 securities
 Public Records
 Estates
 Appellate
 Professional Liability
 criminal defense
 Juvenile Law
 Juvenile Dependencies and Termination
 No area of litigation currently comprises 25% of my practice
 Formerly, criminal law for 15+ years.
 appellate and criminal
 Collection
 Tax and public finance

Question 7

Do you represent indigent clients?		
Answer Options	Response Percent	Response Count
Yes	44.1%	206
No	55.9%	261
If yes, in what capacity do you represent indigent clients?		141
	<i>answered question</i>	467
	<i>skipped question</i>	54

If yes, in what capacity do you represent indigent clients?

Many Pro Bono & Sliding Scale Family Law Cases
 Currently in King County Neighborhood Legal Clinics, but not in litigation
 Pro Bono projects
 Take pro bono cases
 As an attorney in family law cases.
 pro bono
 pro se representation/reduced or waived fee
 As their paid attorney.
 pro bono
 Criminal Defense as conflict public defender and I maintain 1 pro-bono family law client with a local shelter
 tenants in unlawful detainers, debtors in collection matters and either party in custody

or divorce matters

Direct representation or scheduled consultations

Not sure I understand the question. If someone comes in who is indigent but has a problem we can help with will consider representation pro bono.

pro bono

Pro Bono Federal Court Panel

I take on a few pro bono clients.

Discounted fees and some pro bono work

Occasional case taken through Law Advocates

As pro bono attorney

Occasionally I take contingency cases or provide pro bono counsel through the KCBA neighborhood clinics.

To facilitate access to legal services for low-middle income persons on a contingent basis and I advance all costs

As their lawyer.

Estate related matters

Clinics and Direct Representation

disability

Pro and low bono

volunteer via Neighborhood Legal Clinic; sometimes, low bono work

In pro bono cases usually business litigation

Sometimes via pro bono or Moderate Means

referrals of clients from the county's legal aid program

Criminal defense

Pro bono counsel

Social Security Disability and Bankruptcy

Pro Bono and Juvenile

volunteer pro bono attorney with nonprofit

I have. Don't now.

Family Law

I work at a legal aid organization.

probono legal services

Not sure what you mean by "capacity," When my clients are indigent, I represent them pro bono.

some of my clients are indigent

opd appointments

Contingent plaintiff's cases

Pro Bono Attorney

Contingency fee

As their advocate

Contingency Fee Cases and Pro Bono Cases

Office advice/intake

Sometimes appointed to represent indigent Alleged Incapacitated Persons in Guardianship proceedings

primarily pro bono

As plaintiffs

mostly tenants, but it varies

Pro bono

As an attorney. So many need help but falling wages pinch lawyers, too, as people are unable to pay for litigation..

personal injury cases

We offer legal services to clients at no cost when they cannot afford to pay

in personal injury claims against their health care providers

As a plaintiff's lawyer, I work on contingency and many of my clients are injured and either make very little or are unable to return to work.

Personal injury claims on contingency

volunteer at legal clinic; take pro bono cases

many plaintiffs in civil case sare indigent

I take cases where I receive no fee.

all civil law areas--pro-bono

as members of the class in class actions

In personal injury cases.

as plaintiffs who have been injured

I represent clients on a contingency fee basis; most of them could not afford to have an attorney if they had to pay an hourly rate.

counsel

In various civil matters after meeting with them at the King County Neighborhood Legal Clinic

Sometimes pro bono, but usually contingency-fee based.

contingent employment discrimination and wrongful discharge cases

Almost all injured workers are indigent by the time they realize they need representation. Most Med Mal victims are indigent. I represent them as I would any other plaintiff/claimant.

Pro Bono, Low Bono representation

Pro bono

Plaintiffs in PI claims; occasional Petitioners in Protection Order cases

Legal Aid Society

Clark County Volunteer lawyers mostly Landlord Tenant.

in every capacity

pro bono basis on a case by case basis

Pro Bono and contract attorney for juvenile defendants in criminal matters.

As a contingency fee attorney, also as a volunteer at the KCBA Legal Clinic

Through local pro bono program - LAW Advocates or NW Justice Project

Volunteer on Superior Eviction Docket

maybe not indigent, but very poor

Reduced or no fees.

Pro bono in limited cases.

Pro bono through organizations such as the KCBA

Attorney for staffed legal aid program.

I provide volunteer settlement conference/mediations for indigent parties.

Occasionally take pro bono appointment

Through the county pro bono program

occasional pro bono

Through local pro bono program

pro bono referrals through local legal aid office

a combination of sliding fee scale and/or unbundled services

Unintentionally

pro bono

I sometimes do pro bono or "nearly pro bono" cases in family law.

Injured, frequently destitute - contingent fee and advancing costs

As a pro bono attorney

contingency

housing, administrative law, guardianships, and misc. areas

10%

Pro bono attorney

Attorney for them

Ranges from limited representation to full.

pro bono; contingent fee

Panel attorney, cases from moderate means or pro bono clinic

All capacities -- in litigation, negotiation, on appeals, amicus briefing

As attorney of record, in pro bono clinics

As attorney, both pro bono and contingent fee

Trade for service with service

As counsel in cases

Lummi Nation contract; one family law client; most of my clients have little money

Office of Public Defense: dependencies

Rarely... and pro bono.

As a volunteer with legal aid organizations in addition to my private practice

Contingency fee

Contingency fee or pro bono.

Family law litigation

As attorney or as a guardian ad litem

I take some on voluntarily. I am often appointed as a GAL and this is sometimes for indigent clients. The same is true for mediation.

In termination and dependencies

individually

counsel

Occasionally take a pro bono case

Generally carry one pro bono client.

as an attorney representing them

Attorney

I provide free and low-cost unbundled legal services to indigent clients.

Moderate Means Program consultation and unbundled services

pro bono- limited

clients who have no ability to pay but for contingent fees

Do pro bono and low fee bankruptcy.

Sometimes depending on the case.

sometimes pro bono, sometimes contingent fee arrangement

Attorney

contingent fee

Through the local volunteer attorney services

Personal injury claims

Question 8

In the past five years what has been the split percentage-wise between litigation in state district court, state superior court, and federal court?

Answer Options	0--20%	21--50%	51--75%	76%--100%	Response Count
State District Court	266	28	8	8	310
State Superior Court	21	70	110	253	454
Federal Court	214	79	30	17	340
<i>answered question</i>					469
<i>skipped question</i>					52

Question 9

What is the split percentage-wise between your clients who are plaintiffs/petitioners and your clients who are defendants/respondents?

Answer Options	0--20%	21--50%	51--75%	76%--100%	Response Count
Plaintiffs/Petitioners	72	141	77	147	437
Defendants/Respondents	69	163	50	93	375
<i>answered question</i>					471
<i>skipped question</i>					50

Question 10

Escalating Cost of Civil Litigation Survey

What percentage of your civil litigation disputes involve the following amounts in controversy?

Answer Options	0--20%	21--50%	51--75%	76%--100%	Response Count
\$0--\$50,000	162	93	61	34	350
\$50,001--\$100,000	171	139	29	5	344
\$100,001--\$300,000	157	127	41	7	332
\$300,001--\$500,000	166	118	21	3	308
\$500,001--\$1,000,000	174	82	21	6	283

\$1,000,001 or more	171	63	20	18	272	
	<i>answered question</i>					463
	<i>skipped question</i>					58

Do you agree or disagree that the following ideas would be effective in lowering the costs of litigation without substantially limiting the ability to justly resolve disputes? Please rate from Strongly Agree to Strongly Disagree.

Answer Options	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Rating Average	Response Count
A multi-track discovery and trial system based on the monetary value or complexity of the claims with differing pleading and discovery practices	64	169	92	76	32	3.36	433
Restrictions on the number of interrogatories with option to obtain more by court leave	95	170	63	68	43	3.47	439
Restrictions on the number of or length of depositions with option to obtain more by court leave	98	165	64	73	38	3.48	438
Restrictions in the number of experts with option to obtain more by court leave	97	147	92	66	34	3.47	436
Mandating good faith mediation within 60 days after completion of the depositions of parties	113	166	68	63	29	3.62	439
Instituting other restrictions on discovery with option to obtain more by court leave	73	130	123	65	37	3.32	428
A standard list of discovery questions that must be answered by each party early in the litigation	114	150	78	64	35	3.55	441
Establishing a discovery dispute center that would use volunteer retired lawyers and judges to provide prompt opinions in discovery disputes that could be appealed de novo to the trial judge	74	150	114	76	23	3.40	437
	<i>answered question</i>						441

Question 12

What other restrictions do you suggest?	
Answer Options	Response Count
	158
<i>answered question</i>	158
<i>skipped question</i>	363

Response Text

None

Public reimbursement for Guardians ad Litem for indigent or near-poverty-level parents in Family Law cases, with reasonable payment level, e.g., \$750 for 10 hours of work in Pierce County seriously limits number of attorneys who can undertake to serve as GALs. Maybe charging a fee for all cases or all Family Law cases filed to be used to pay for GALs.

The Federal Initial Disclosures under FRCP 26(a)(1) would be helpful in WA state courts.

Put limitations on requests for electronic discovery.

Limitations on the extent of electronic discovery and limitations on a party's ability to use the probably inadvertent destruction of electronic information as a basis for sanctions.

Length of briefs Number of motions

Better e-discovery regulations and guidelines

State should require initial disclosures as in Fed Ct, and employ standard discovery requests to avoid the constant disputes over discovery and objections.

One of the greatest litigation shortcomings is the inability (refusal?) of too many judges to enforce the discovery rules-- allowing them to be significantly gamed!

Limiting the number of Interrogatories, request for admissions or a blanket number of depositions does not help significantly and often are unfair. E.g. In a med mal case you often need to take 6-10 depositions just of the defendants and key witnesses. But limiting the number of experts can make all the difference in the world, and they are the most expensive part of the case as the doctor will charge at least \$500/hr, it's almost \$1000 for the reporter, and then there is lawyer time. If the witness is out of town, the costs go way up. Limiting the number of experts is the best thing to do to save costs.

A more reasonable deadline for summary judgment motions. Defendants often wait until the very last minute to file SJ motions, despite the fact that they often make or break the potential for settlement. Based on the current schedule, SJ motions aren't done until all discovery has been completed. It also provides an opportunity for Defendants to delay their discovery until just up to the SJ deadline. By that time the Plaintiff has nearly completed all their discovery (including motions to compel to obtain discovery), and their costs are already really high.

The most costly aspect of discovery is document production. The best way to reduce costs would be to significantly limit the documents available, or require judicial review of document requests to ensure they are narrowly tailored and can be fulfilled economically.

In the vast majority of cases, the parties and their lawyers engage in an appropriate amount of discovery relative to the issues and values at stake. Thus, restrictions aren't necessary in most cases.

I believe that most interrogatory questions are duplicative and wastes of time. I think there should be very hard caps on interrogatories, focus on depositions, and a simplified method to deal with discovery disputes.

Mandatory usage of pattern interrogatories and requests for production developed by the Bar Association for each case type would be helpful. This should include the ability to add up to a fixed number of individually tailored questions drafted by the party propounding the interrogatories and requests for production.

We need better enforcement of the rules that we have.

The reason I strongly disagree with mandating mediation that far into litigation (60 days after discovery is completed) is because, most often, good litigators have mediated, or tried in good faith to mediate, long before that point. If settlement hasn't occurred before that point, it only adds to the cost of litigation. If mediation or settlement hasn't occurred by this point, someone intends to take it to the bloody end.

The defense bar has become extremely abusive of the rules as they currently exist. They know that they can "out-paper" the plaintiff most of the time. Enforce the rules that do exist!

Better restrictions (and more easily enforceable restrictions) on the SCOPE and PROPORTIONALITY of discovery requests; more stringent limits on TIME for discovery

When Abraham Lincoln rode the circuit with the judge and his fellow lawyers in Illinois, they would arrive in a town, interview clients and witnesses, hold trial, reach a verdict, and move on, all usually within a week, depending on the size of the litigation docket. There was very little discovery, and justice was relatively swift, requiring only that the litigants wait until the next spring or fall circuit.

Do we really think that justice is now better served with cases that take years to resolve, and only after the litigants are battered and impoverished through depositions and interrogatories and motion after motion?

The current mode of litigation is wonderful for the pocketbooks of lawyers, and horrible for those of their clients. We have elevated our arcane art above the true interests of our clients.

The solution is a severe reduction in the discovery battles.

More fee-shifting provisions for prevailing parties to keep overly-exhaustive litigation tactics in check.

Start enforcing civil rule 11 against pro se litigants

Tighten the minimal relevance standard. Require initial disclosures like in federal court.

The use of initial disclosures, similar to the federal rules.

1) changing the judicial culture to keep an eye out for and actively DETER the bad apples who are litigating because it makes them more money; and 2) I wish my county had a formal case schedule, like King County - our stuff gets dragged out and thus is more expensive.

3) MORE JUDGES! I can't get efficient resolutions in a timely way.

Discovery isn't the problem. It's efficiency and respectful use of the court system.

The cost of civil litigation results from hourly rates, billable time, and expenses. Restricting a lawyer's ability to manage his or her case is unfair to the client. If trial courts exercise more scrutiny over fee requests, it could help dissuade lawyers from charging exorbitant hourly rates and reporting inflated time.

Uniform discovery rules, state-wide.

The costs related to obtaining medical records from health care facilities and doctors is ridiculous. This is so despite (or perhaps because of) the statutory regulation of the cost for the same. Medical record copying has become its own industry. My clients are typically spending \$1,000-\$1,500 for records alone, and their recoveries in litigation are decreasing.

Express revisions to the "metadata" and electronic discovery requests which are used to mercissly drive up the cost of litigation when the metadata is not relevant to the issue at hand. Granted the discovery rules are broad, a threshold hearing should be ordered before a propoent is allowed to demand the metadata be collected and the hearing should resolve which side bears the costs.

For family law cases I believe that pleadings of the obligor parent claiming no funds should be stricken if they do not provide financial documentation establishing their lack of income, specifically last six months checking accounts, last two years taxes, last six months of paystubs. I think it is ridiculous how many family law attorneys enter the court room claiming their clients have no funds to pay child support, the obligee party does subpoenas to get the records, find out obligor party was lying, and the obligor attorney claims they didn't know. I see obligor parents usually Dads get away with this all the time, and it is awful that so many attorneys support their clients decision to not show proof of their

income.

More consistent and clear rules across different counties. King County is fairly predictable, but Snohomish and Pierce County rules/culture give plaintiff attorneys room for abuse of the discovery process to leverage settlements even where not merited.

California has "form interrogatories" for each type of civil case. A litigant or attorney can then check boxes on the forms for each question they want answered. This makes discovery simpler and easier. Plus, the firms are unlikely to be objected to because they have been vetted.

Mandatory initial lay-down discovery. Mandatory mediation at an early stage, say 90-120 days after Confirmation of Joinder, with option to obtain extension by court leave.

Change CR 35 to guarantee a right to an IME. That would stop many useless motions.

Feedback from judge about what issues require briefing in response to complex motions (i.e., what issues are seriously at issue).

Restrict and sanction discovery abuses by parties under the current rules.

Restrict the Court's authority to "bump" or place on standby those complex cases that inherently have huge costs in preparing for trial

I am a CPA economic damage expert (non-lawyer) and suggest the use of economic damage mediation/arbitration to shorten the process. Most litigation involves economic damages and with a damage expert and a process to mediate financial damages, ADR could be enhanced, shortened and have a higher success rate. Most mediators do not have the financial skills to mediate two opposing economic experts. I would be happy to provide more detail, logic and suggestions

Restrictions on doctor billing. The number one expense in litigation is getting doctor's involved and obtaining experts in the medical field. Doctor's keep charging more and more for conferences, depositions, etc. It is hard for plaintiff's with little to no money to fight "independent medical exams" (IMEs), which are really defense medical exams and there is nothing independent about them, that big companies or the state get. They are able to get as many as they want because they have the big coffers to do so. I commonly ask how much they get, and Doctor's have testified that they get 500,000 to 1,000,000 gross doing IMEs for the State or big companies to basically just "shut down" claims by plaintiff's in personal injury and claimants' in workers' compensation claims. Maybe if each side was limited to the number of experts? As for workers' comp claims, it seems that there would need to be a change of law as whenever a doctor disagrees with the state, they send the claimant out for an IME. It is common for a claimant to go to 3-6 IMEs a year when the Department of Labor and Industries wants to close a claim. Then because of the number of exams, they say "medical preponderance" solely because they are able to get as many expert opinions as they want because of unlimited resources.

Standardizing e-discovery scope

Restrictions on restrictions to attorneys doing a good job and getting paid fairly

Advance notice and agreed scheduling of motions. Eliminate the blindset motions usually dropped at respondent office at 4:30 Friday afternoon. This is a common practice of civil defense attorneys.

binding arbitration of family law and divorces

Stop abusive plaintiff's counsel from turning a civil suit into a fishing expedition

The biggest problem is costs of trial not just discovery. I think having a discovery phase where the parties get an advance ruling on admissibility of evidence from a judge would be helpful.

A restriction or a range of the amount a physician or other expert can charge for their time in deposition.

With that last one backed up by sanctions if necessary and the losing party pays the discovery master.

The biggest discovery problem is that judges don't want to be bothered with complex questions they don't have time or resources to analyze but which could tip the balance of a case.

The multi-track discovery is not a bad idea; but it's difficult to put in practice. Is a plaintiff's attorney going to claim a case is less than \$100k to get some limits on discovery, only to find a jury awards \$175k? Do they forfeit the extra \$75k? If so, it's hard to imagine an attorney agreeing to do that.

Early mediation -- before discovery commences.

Increase mandatory arbitration to \$100,000.

Punish stalling tactics on answering interrogatories.

Revise court rules to impose fees and costs on loser in discovery dispute, and punitive sanctions for obstruction or obfuscation

In personal injury practice, the biggest litigation cost driver is the cost of getting medical testimony, which is required under Patterson even where the treatment is not or should not be controversial. While these costs are driven by medical doctors and their corporate practices, which are getting bigger and fewer, the Bar could alleviate this problem by giving more teeth to requests for admission as to the reasonableness and necessity of medical treatment and expenses, such that the defense would have to reimburse the outrageous fees of medical doctors (particularly specialists such as orthopedic surgeons) if the plaintiff has to incur them to prove what should be admitted.

Severely restrict Summary Judgment. Nothing can settle until the case survives a summary judgment motion, and by then the costs have all been spent. Plus, it's a huge burden on the parties, a trial would actually be more efficient. If granted, there is always an expensive appeal, and often a trial two or three years down the road. If denied, it was just a huge waste of time.

Expert costs are the most expensive part of a case. This is the aspect of litigation costs that needs to be controlled. Caps on expert hourly rates should be considered.

What about adopting a rule similar to the "offer of judgment" rule found in CR 68 for Plaintiffs? As it presently sits, in cases that arise in jurisdictions without mandated mediation, there is no "hammer" to befall the defendant who makes an absurd offer of judgment prior to trial. Such a rule might level the playing field in terms of risk management by the defense

(1) Allow electronic service by court rule, not only by written agreement; (2) make discovery master mandatory in complex cases; (3) award fees and costs to non-prevailing party; court impose limits on how much experts and treating physicians can charge for their time

1) Assessing terms for failing to mediate in "good faith" and a factual determination whether that in fact is done.

*At present it is a joke and a waste of time

Plaintiffs should be prevented from placing a case into mandatory arbitration as a tactic to prevent defendants from obtaining responses to long interrogatories. This prevents defendants from obtaining any discovery in regards to prior injuries and treatment because the MAR (mandatory arbitration interrogatories) do not allow questions regarding prior injuries/treatment.

A set limit on total number of pages permitted in motion practice. Each motion's number of pages would be added up until the limit is reached.

Increasing the number of defenses to discovery, e.g. limits on numbers, only causes defendants to contest discovery more, with additional grounds to argue against discovery.

Judges hate discovery disputes and tend to not want to rule or "split the baby". It is only if the judges are willing to devote the time and effort of managing discovery, that the process can be made smoother and more fair. There is no set of rules that can be drafted that will prevent people who want to delay or be burdensome from accomplishing those goals.

Not a restriction, but make it easier to present expert testimony by real-time video.

Instead of increasing the number of events with deadlines that must be responded to, eliminate them! Like supply and demand, let the case work itself out on its own timeframe.

We need judges who will enforce the current civil case schedule deadlines before we add any more.

Cost-based medical records retrieval fees, caps on expert witness fees, streamlining admissibility of medical charts and billings.

Restrictions on the per-page fees that can be charged for medical records. Severe financial sanctions (treble) against parties who do not sufficiently answer interrogatories/requests for production, including costs and fees for proving facts that should have been answered in Rogs/Reqs (similar to RFA), as well as parties who rely on objections that are overruled in motion to compel. (The proliferation of rogs/reqs/rfas is due in large part to Defendants' petty horse shit such as objecting that the word "doctor" is not defined. I have hundreds of rogs in well-focused med mal case, not because I need them all answered, but because I often have to ask twelve permutations of the same question to get an answer).

Plaintiff's in employment discrimination cases have to get all their proof from employers who have all the records and witnesses. Limiting discovery hamstring the plaintiff employee or former employee

who is nearly always indigent or low income. Recognize the disparities in power and access to information and witnesses with in different types of cases.

The costs of personal injury litigation have skyrocketed, primarily due to increased costs associated with obtaining medical records and paying treating doctors inflated fees they require before providing a phone interview or a perpetuation deposition. Imposing more court rules does nothing but create more process and more "gotcha" hoops to jump through, and some judges enforce them and others do not.

Allow expert and medical testimony by declaration in superior court.

Penalties for refusing to admit matters that are not actually in issue. A presumption of the reasonableness of the amounts for medical bills absent evidence to the contrary.

Limitation of expert witness fees

Enforcement of sanctions as provided by the civil rules for frivolous conduct in discovery.

1) A civil rule requiring that discovery questions be answered in good faith - i.e. no "subject to the foregoing objections crap. It's impossible to know what someone means by that.

2) "the court is encouraged to" rather than "may" issue sanctions for discovery abuse. This should be doubly true of firms with over 20 attorneys.

3) discovery sanctions should be joint and several between client and attorney. The attorney interposes the BS objection, they should pay when, inevitably, their objection is overturned.

4. Limitations on total No. of IME exams. A client may have social security, L&I, and litigation and have to undergo many IME exams. It's duplicative and wasteful.

None. I believe restrictions on discovery actually increase the cost of litigation. Much of the unnecessary litigation costs are the result of frivolous objections to legitimate discovery requests.

Limiting expert expenses to no more than 10% of the perceived damages (via statement damages?)

Provision to recover expert witness fees.

Some restriction on the amounts charged by expert witnesses. For example, to meet with a treating physician for 15 minutes, I had to pay \$1,000.00

Mandatory settlement conferences by the court as opposed to private mediations which just escalates costs would be better, along with standardized CR through state, and mandatory electronic service without leave of court.

The general idea of limiting discovery would not limit the ability to "justly resolve disputes" is wrong-headed nonsense. Laydown disclosures as required in federal court, on the otherhand, would help.

1. Restrict scope/breadth of discovery, so that parties do not have to move heaven and earth to find marginally responsive documents.

2. Judges need to be willing to put their foot down on discovery abuses and scope.

No expert depositions

1. Personal injury cases would move forward quicker if there was not such resistance to CR 35 exams. The number of motions regarding CR 35 exams seems to have increased. If the plaintiff in a personal injury action claims ongoing injuries and the defense requests an exam, the plaintiff should have the burden of showing why it should not go forward or why additional restrictions beyond what is outlined in CR 35 should be granted.

2. Personal injury cases would move faster if upon receipt of the notice of appearance from the defense, the plaintiff was required to turn over a discovery packet. It would be logical for the packet to include a set of interrogatory responses (for example, the King County pattern interrogatories), all health care records from 10 years pre-incident through the current date, and all employment records.

3. Personal injury cases would resolve much faster if the plaintiff was required to turn over all records (for example, health care records from 10 years prior to the incident through the current date).

Restrictions on e-discovery, unless a Judge finds e-discovery warranted in a specific case and provides guidance as to its limits.

Standard discovery is not expensive- i.e., the cost of answering interrogatories is not the expensive part. The expensive part is hiring experts. The hourly cost of deposing opposing experts is the expensive part. Often they charge up to \$1,000 hour for deposition. A discovery dispute center sounds like a terrible idea if it is staffed by retired attorneys. Let's be honest- retired attorneys will always rule in favor of their friends and the matter will end up in superior court resulting in additional delay rather than

the promptness mentioned in your query. The best way to lower the cost of litigation is for the superior court bench to enforce the Civil Rules. If attorneys knew that the Civil Rules would be enforced, there would be far fewer motions and far fewer discovery disputes.

Stronger standards requiring the awarding of terms for abusive practices.

Limits on the use of electronic discovery as a weapon to force defendants to capitulate. Presumption of ESI fee sharing that can be overcome by a showing of hardship. Limits on Requests for production.

mandatory award of attorney fees to the prevailing party if a discovery dispute is decided de novo by trial judge after a dispute center ruling has been made.

Increase fee-shifting provisions to compensate prevailing parties for actual attorneys' fees and costs.

More receptivity by judges to limit overly burdensome and expensive discovery when statutory requirements are sufficient, i.e. protective orders

lawyers milking clients who can pay (or have relatives who can pay) by increased discovery and motions practice when assets do not justify

Educate the bar that the cost and extend of discovery is both unnecessary and damaging the profession.

Shorten the time between filing a Petition and Trial.

Earlier mandatory discovery or ADR for non-complex cases

Procedures for use of volunteer retired lawyers and judges would need to have options for litigants to strike any believed to be prejudiced.

Better case management by judges

Sanctions for bad faith use of boilerplate defenses.

Less rote objections to interrogatories, and a more honest effort to supply answers.

The more restrictions, the more expensive family law practice becomes, as seeking relief from the restrictions is expensive. The restrictions don't seem to provide much benefit to clients--just to the Courts in limiting the work it must do.

Judge's must be proactive in awarding litigation costs when equitable and sanctions when appropriate prohibit discovery in record review cases unless without court leave

Adopting a Model E-Discovery Protocol

Mandated early discovery conferences for medium to high value cases

Heightened pleading standards to dispose of frivolous cases earlier with less money expended on discovery

Explicitly adopting the proportionality principle for discovery in rule form

Shorter time between filing and trial date. Nothing gets cases settled like an imminent trial date.

in commercial litigation, the stakes are too high and plaintiffs generally hide answers, to be honest about it. discovery is a necessary tool to root out the weak cases brought by lawyers who just bring cases.

Change the rules to allow for telephonic or other forms of remote depositions without the need for agreement by the other side or court order. For larger cases, require each party to make available the witness most knowledgeable regarding that party's records and evidence for a telephonic deposition of no more than two hours limited to identifying the location and identity of pertinent records and witnesses.

Page or word limits on briefs in state superior courts. No oral argument on motions unless requested by the court.

Expedited trial schedule.

I absolutely detest the notion of special rules based upon case size. There are already too many different sets of rules to keep straight, especially for those of us who practice in another jurisdiction. Plus, there are small cases that are simply more complicated, and big cases that are simple.

Trial courts must get over the attitude that discovery disputes are a waste of their time, with the default position being to give the requesting party whatever they want.

Early pretrial conferences and use of pretrial orders.

Eliminate the court clerk control over ex parte department keeping attorneys and clients away from the real decision makers

State court judges strictly enforce the existing discovery rules, such as disclosure of expert deadlines, like in federal court. This is a huge problem- defendants refusing or failing or changing their expert disclosures after discovery cutoff and state court judges, unlike federal court judges, rewarding this behavior by permitting defendants to do this, which causes motions practice and enormous increases in the costs of discovery. People need to follow the rules like they do in federal court.

Get rid of interrogatories altogether

Limit expert depositions

Allow judges to freely comment on the evidence

Require expert testimony to be given by declaration with live testimony limited to cross examination

Appoint one judge each month as the discovery judge to rule on all discovery motions

Sanctions against attorneys who do not produce documents, do not respond to interrogatories and do not confer and who cancel depositions and are never available for trial.

In line with federal rules, require voluntary disclosures early on.

Earlier trial availability with stronger judicial requirements for delay. Time is the enemy of reasonable expense management.

discovery masters at cost of parties

The courts unduly restrict the litigation process already. Any further restriction would only burden the lawyers. We already have too many local rules, review hearings and other procedural steps that cost the client unnecessary expense.

one expert per subject so as not to be hammered by multiple experts - exponentiating depo and discovery costs, especially complex or medical malpractice cases - as opposed to an array and then dismissing all but one - the costs are borne by the clients and w/ travel and rates of \$500/hour per more for experts - is prohibitive and unjust.

Eliminate "collaborative law" practice

Courts continue to get upset and dress down counsel when they resort to the Courts for assistance in discovery disputes, this attitude must change. Plaintiffs do not respond to discovery timely nor do they provide complete responses. The Court gives them more time on several occasions until a sanction is imposed, this pushes back the depositions by at least 6 months as one wants the documents to do the depositions, be in contracts, medical records, or building plans and specifications, it is constant across the board in litigation. To limit discovery, or ask the court to assist is like asking someone to throw a lifeline that is not attached to a rope.

Change in Washington Law favoring balanced fee shifting to a prevailing party (prevailing meaning the party that offered to settle, and later did better than that offer at conclusion of the case).

restrictions on abusive conduct

I am sick of counsel who show up to mediation without clients or with client reps who do not have full authority to settle. These people deserve a proper ass-kicking

Limit the amount lawyers can ask to be paid. On a contempt motion 4-pages-long, no one should be asking for \$3,500. We over value ourselves.

A lay down discovery obligation reasonably early in the case.

Impose sanctions for failing to provide basic discovery without substantial justification.

Lowering bar dues.

Greater control of pre-trial and discovery by the trial court instead of blowing these issues off!!

Lay down discovery as in federal court.

Standardized interrogatories (with leave to add X additional) in each area of trial practice

I represent indigent clients, but I do not like the tenant that this survey proposes, which is that my client's rights are restricted by what kinds of discovery I can ask for. Each case is unique!

Time restrictions on all phases of litigation.

If judges would actually make parties pay a price for refusing to provide discovery, it might put an end to

the practice. How about enforcing the existing rules!

Automatic disclosure of certain categories of information required (insurance policies, fact witnesses, for example)

Mandatory e-service. Courier costs and printing costs add up enormously. Also, mediation is too expensive for smaller claims, but might be beneficial.

Severely limit or eliminate interrogatories and requests for admission. Discovery is the biggest cost and most of it is a waste.

Limiting discovery can sometimes limit abuse but often is used by parties to cover up wrong doing. Watch out for the one size fits all solution. Adopt the federal approach. The most effective idea would be to assign a discovery commissioner who follows the discovery process and is empowered to minimize the need to file discovery motions.

If a matter has not settled, mandatory exchange of a standard list of records at least 30-60 days prior to the matter proceeding to trial

limit e discovery

Tracked discovery so plaintiff has to produce expert testimony early and prior to defendant. Separate tracks for liability and damages when appropriate.

Prohibit block billing, esp. in probate/guardianship cases

Reducing court management of cases and associated deadlines

Initial discovery disclosures as in Federal Court would help minimize discovery expense and disputes. Mandating good faith mediation 90 days after filing would facilitate earlier settlements.

One of the largest expenses is production of documents, especially electronically stored records and emails. Limiting the breadth of the expeditions for these with stiff penalties for failure to produce truly relevant records would limit the cost tremendously.

Model our discovery rules after Oregon's. They work well and the cost savings are significant. Our rules actually limit access to justice, particularly for modest cases.

Requiring the number, scope, and burden of document requests (including ESI) to be proportional to the needs of the case and amount in controversy.

Court control of pro se litigants.

Discovery can't be restricted; otherwise a client's rights in a complex financial marital dissolution matter will be compromised.

Any discovery restrictions should be attuned to the nature of the litigation. Different areas of law require different explorations of the facts.

Provide a model protective order with a clawback provision for document production, For ESI discovery that is based on custodians and agreed search terms, prohibit responsiveness review and associated responsiveness redactions and allow documents to be redacted only for privilege. Mandate timely production of privilege logs.

Mandatory arbitration on all cases where defendant answers.

Reduction in the amount of non-substantive local rules (cover sheet color differing between departments etc).

On low value cases that are not subject to arbitration or where the fees exceed the value of the case (an adverse possession case for example) a mandatory mediation within the first 90 days of the case.

Look closely at Oregon practice . . . seems to make a lot of sense

Discovery cutoff dates

Fee shifting.

Do NOT go to fed court system, where expert reports are required -- because you still need to depose the experts but have to spend a lot of money getting the reports ready, as well.

Switch to the OR system of no expert discovery

Highly skilled and experienced discovery masters to supervise discovery in complex cases to weed out abusive practices.

Question 13

Does your practice include discovery that is in the form of electronically stored information (ESI)?		
Answer Options	Response Percent	Response Count
Yes	72.7%	325
No	27.3%	122
<i>answered question</i>		447
<i>skipped question</i>		74

Question 14

Do you use third-party vendors to assist with the management of ESI, such as using databases or converting discovery into formats you can search on your own computer?		
Answer Options	Response Percent	Response Count
Yes	41.0%	132
No	54.3%	175
Other	4.7%	15
If "Other", please explain.		16
<i>answered question</i>		322
<i>skipped question</i>		199

If "Other", please explain.

Sometimes - have inhouse IT department but may need third party vendor depending upon the shape of the production

Occasionally

Sometimes but rarely

We use our inhouse IT department, but are considering outside vendors

Not yet. We are a small company still

I can't afford it

Sometimes, but usually only if the client requires the vendor. We will use a third-party often, however, to scan paper documents into an electronic database.

Haven't had a need to do so, but it could happen

Sometimes yes, sometimes no

have done so, but it is prohibitively expensive most of the time

rarely

yes, but only in large cases

Yes and no, depending on the client's in place systems.

haven't had to do yet; if so I might use another party

Depends upon the case specifics.

I work with people who use 3rd-party vendors

Question 15

Do you review ESI discovery using in-house staff or do you engage outside services?		
Answer Options	Response Percent	Response Count
In-house staff	65.9%	209
Outside services	6.0%	19
Both in-house staff and outside services	28.1%	89
<i>answered question</i>		317
<i>skipped question</i>		204

Question 16

What percentage of your litigation costs are for managing and reviewing ESI?		
Answer Options	Response Percent	Response Count
0--20%	77.8%	246
21--50%	19.0%	60
51--75%	3.2%	10
76--100%	0.0%	0
<i>answered question</i>		316
<i>skipped question</i>		205

Question 17

What discovery methods are most effective in justly resolving disputes? Please rate the following methods in order of effectiveness from Extremely Effective to Least Effective.							
Answer Options	Extremely Effective	Very Effective	Effective	Slightly Effective	Least Effective	Rating Average	Response Count
Depositions	134	160	93	26	7	3.92	420
ESI Discovery	10	44	178	94	39	2.70	365
Interrogatories	12	75	172	128	35	2.77	422
Requests for Admission	15	84	128	125	65	2.66	417
Requests to Produce	44	172	156	43	6	3.49	421
Subpoena Duces Tecum	31	136	176	58	12	3.28	413
<i>answered question</i>							424
<i>skipped question</i>							97

Question 18

Do you strive to keep discovery costs proportionate to the stakes in litigation?

Answer Options	Response Percent	Response Count
Yes	95.0%	403
No	5.0%	21
If yes, please describe techniques you use to save money and time in discovery.		212
<i>answered question</i>		424
<i>skipped question</i>		97

If yes, please describe techniques you use to save money and time in discovery.

Make client pay costs up front after frank discussion.

Easy in Family Law cases involving less than \$50,000. If clients cannot afford discovery, we do not do discovery. Often done at pro bono settlement conferences in Pierce County or at trial which is not an efficient use of court time.

I limit the number of written discovery requests and depositions depending on the case.

I explain the costs to the client and usually they go along with doing less discovery.

Try to stipulate with counsel on this subject if the case warrants it.

Working with opposing counsel to come up with a mutually agreeable list of ESI search terms and requesting hit reports

work with op atty to stipulate and agree to facts and voluntarily share necessary documents.

Attempt to limit the scope of broad discovery requests, particularly those involving electronic discovery.

I do not waste time with worthless objections which are not informative and accomplish nothing. I always answer or explain why it can't be answered or answer it in a limited way, explaining why it is so limited. Also, in regard to RFPs--- I NEVER just produce everything my client has and let the other attorneys glean the responses. I respond precisely. In so doing, I have found the cost of discovery is less. Why, I am not sure but it could be because it focuses the discovery and limits the number of worthless interrogatories and discovery question.

Get opposing counsel to agree on document discovery, agreement on discovery schedules and dates and times for deposition.

Agreeing on key words, early compromises in the number of deponents, agreeing on the number of custodians.

I may limit depositions to be taken, or skip interrogatories and move forward to depositions instead,

Counseling client on risk/reward profile relative to cost of discovery and merits on claims.

I rarely use any formal discovery.

use of boilerplate sets, trimmed to fit the facts of the case.

We usually pursue documents and keep interrogatories to a minimum since they are rarely answered.

Effective use of form discovery tailored to the particular case---but this effort is often frustrated by litigants who know they can game the process with little or no risk that a court will interfere/enforce/support the proper use of discovery and he related opposing party's and attorney's responsibilities to provide discovery pursuant to Fissions, the RPCs, etc.

It is very difficult to keep discovery costs low. Today, Defendants (big companies in particular) often refuse to produce ESI requests as over broad and refuse to file a protective order too. So, Plaintiff's attorneys end up filing a motion to compel, which takes time and money. Motions can be one of the costliest parts of discovery, and courts rarely order full costs to the winner. If discovery disputes could be addressed by ex parte or a discovery master appointed by the courts, it would reduce costs.

It is very difficult because of the overbroad nature of discovery permitted by the existing rules. Wherever possible, we work with opposing counsel early to try to narrow the focus of discovery to only those issue actually necessary for resolution of hte disputed issues.

Don't send out interrogatories unless I think they are real critical to gather info.

Usage of pattern interrogatories and trying to limit the discovery requests to what is absolutely necessary for this case. I do not propound unreasonable amounts of discovery. I try to use informal exchanges of documents (with signed affidavits of full disclosure) to reduce costs as well.

My clients generally cannot afford depositions, so I use requests for

admissions, production and interrogatories

Limit the scope of discovery and file dispositive motions early.

First, you attempt to all opposing parties to stipulate to produce the evidence, exhibits, documents, etc. that will be the basis for their respective proofs. You then exchange without the necessity of RFPs, subpoenas, etc. Much of the "paper war" can be avoided if people don't ask for irrelevant materials and items just to make it labor intensive.

Utilization of interrogatories and Request for production before deposition are considered.

Asking parties to voluntarily disclose all financial information.

If a client is convinced they are aware of all of the opposing party's assets, etc., have them sign a written request not to conduct discovery, with a waiver and release.

Low to middle income parties often face disputes involving relatively small amounts in controversy, and even minimal discovery costs and fees may quickly become disproportionate.

But I am often at the mercy of an opponent who worships at the alter of discovery.

omit liability deps where liability is clear; limit expert deps to just those absolutely necessary

Early settlement negotiations.

Common Sense.

Limits on Interrogatories and asking client to obtain documents

Don't ask for the kitchen sink. Only seek what you really need.

Seek stipulations to produce documents without discovery requests

I don't send out unedited rogs. I send a SDT more often than asking for RPDs these days - if I can't rely on someone, there's no sense expecting to file a motion to compel down the road. It ends up being more cost effective in the long run.

Mostly? By being decent and using the local rules to my advantage. A businesslike voluntary disclosure of data at first. insisting on compliance with already established (and often ignored) local court rules that require disclosure, and formal discovery only as needed.

I try to keep discovery to more or less relevant topics. When I see a discovery request that asks for totally irrelevant things, I try and find out how much client time is involved in answering. I'm far more apt to object and to stick to my objections when responding really is burdensome for the client. I've found that sometimes you can negotiate with opposing counsel about the scope of the response.

Targeted interrogatories

I have the client establish a budget for the case based on costs I discuss with them. That budget may limit the number of people I depose, and the experts I engage. There are no rules or procedures I impose on a case to limit cost. I simply do that which the case requires and the client's budget will allow.

Informal contact with opposing counsel or party

Discuss cost/benefit with client; recommend/attempt less expensive route (such as RFP) before attempting expensive route (ex.: subpoena); attempt informal discovery with counsel; attempt agreed protective orders when applicable

Limit electronic discovery, limit depositions.

cost analysis of discovery costs as a function of reasonable damages award

Try to informally exchange discovery

Educate client thoroughly on cost/benefit analysis of discovery in advance for each and every discovery

item. Warn of cost of having to answer to discovery from the other side. Outline claims and elements with the client at inception of the case to target primary issues and focus discovery. Strive for early mediation.

Try to use agreement to trade informal discovery and ask for documents that are necessary to determine fair market value of assets/debts, benefit valuations, etc.

I always ask opposing parties if they are willing to do open discovery to get a case settled.

Our clients tend to be the targets of what I describe as "harassing" discovery requests. We use the 26(i) process then ask the court to impose limits.

early evaluation of potential scope of responsive materials;

early, pre-discovery or limited discovery mediation

Yes, because many times clients can not afford this type of active litigation. It is a very well thought out and planned process.

Self control. Open and honest communication with my client.

Prioritize what discovery is most needed.

Don't start the arms race.

Reviewing strategies that gets the most information and leaves the least likely option of potential surprises and adjusting that method based on the complexity of the case. For example, if I am litigating a standard breach of contract with very few variables- I will use Request for Admissions to produce a linear path in prep for Summary Judgment. If the matter is more complex or contentious- I use interrogatories first, then production of docs, discovery and finally deposition if needed.

Limited, highly focused discovery requests. Conference with opposing counsel to limit scope of discovery and, if necessary, motions practice.

Get stipulations on non-contested issue

We keep a very close eye on our costs and make determinations on which experts we can retain, numbers of experts, travel costs, and trial costs such as trial exhibits, based on the probably recovery range in the case.

Keep discovery simple and streamlined

Try to do less discovery (depositions) in smaller cases and/or attempt early resolution.

Try to do as much 'in house'.

limit use of depositions

I'll forego depositions, increased use of requests for admission,

Attempt to engage in informal discovery with opposing counsel

store all discoverable documents electronically

Use requests for admission and er 904.

Limit number of experts; rely on treating physicians as much as possible; go to 'tradesmen' instead of professional experts -- for example in a recent truck case I hired as my expert a Kenworth mechanic (part time and after hours) to consult and provide expert opinion on a number of matters relating to the operation of the truck.

Limit discovery in smaller cases. Fewer depositions, less intense written discovery, fewer motions.

Use alternative means such as govt reports, corporate filings, media stories, google and Facebook searches

fewer depositions, fewer experts, expert testimony by declaration

Agree to an early exchange of key documents to foster early case evaluation and settlement discussions.

Clients chose, but choose with cost-benefit in mind.

Being selective on taking depositions; only ordering transcripts of depositions when necessary; not using videotape for depositions

For most auto cases, discovery includes the deposition of the defendant, interrogatories, requests for production, and maybe the deposition of the Defense Medical Examiner (DME) if it is an unfamiliar DME to me. For premises liability cases - where discovery is much more contentious - it may take several rounds of interrogatories, requests for production, and requests for admission to obtain basic information from the corporation and defense counsel. Then, depending on how many witnesses the defendant identifies - i.e. they attempt to bury key witnesses in a long list of witnesses with no description of their knowledge - it may be one CR 30(b)(6) deposition or it could be 5 depositions with a possible repeat of the 30b6 deposition depending on how unprepared the witness is

- clearly focused discovery request (ROGS/RFP)

Involve client in discovery cost decisions

Taking advantage of Mandatory Arbitration in smaller cases.

Meaningless question. Discovery is a different creature in a worker's comp appeal vs. a family law (financial/custody) matter. It is also impossible to control discovery costs if the opponent engages in "send them the bad interrogatories" (family law); or in the case of a worker's comp appeal, permitting the opponent (employer/department) to load up on expert witnesses. Often, discovery is foregone due to client's inability to afford it.

Limit depositions.

No depositions of CR 35 examiners

Offer stipulations for medical records in return for free copies of same

Delay ordering depo transcripts or copies pending mediation

Limit depositions to key defense witnesses only

Present expert trial testimony by video in appropriate cases

Limiting depositions; limiting experts.

Limiting numbers of experts brought in to testify; working to limit issues in controversy early in litigation; "shopping" available experts; performing more perpetuation depositions of treating providers or limiting treating providers whose treatment is a duplicate of some other treatment provider or simply having expert summarize; limiting time spent deposing defense experts

I minimize discovery and use statutory offers of settlement, RCW 4.84.250 et seq. -- even in big cases -- to ambush defense lawyers who wind out on endless discovery.

Limit depositions to only those that are necessary; cooperate and discuss with other counsel rather than filing motions

Don't ask for unimportant or irrelevant stuff.

I don't take depositions of all defense experts. I make them stay within the expert disclosures on depositions.

My time and over head drive the discovery requests as a practical matter. Bigger cases receive proportionately more effort.

NO I DO NOT STRIVE TO KEEP COSTS PROPORTIONATE BECAUSE IT IS IMPOSSIBLE TO DO SO. But I want you to read my response. The issues requiring expert testimony are wholly independent of the stakes in litigation. In an L&I appeal, where an injured worker needs further treatment but is unlikely to get any disability or time-loss income, it is easy to spend \$10,000+ on one or two expert witnesses to try to expose the bad-faith, lies, deception, and chicanery of the washed-up, piece-of-shit ex-surgeons who become the paid whores of the insurance industry.

Use depositions if it is high stakes otherwise try to settle based on review of responses to RFPs and Rogs.

RFA's on liability or other clear issues, especially in smaller cases. Avoid depositions in smaller cases. Use written discovery.

Encourage disclosure of information in original format (native) format, rather than manipulating disclosure to hide important data and make the data hard to use. Encourage judge to reject defendants'

efforts to hide data or make it useless.

The amount in controversy dictates how much discovery you can afford to participate in. Usually, the other side has the same consideration of dollars and constraints.

We prepare case specific interrogatories, which are objected to by the defense since we have court approved interrogatories. Thus, we spend more time tailoring discovery and yet still have fights because the discovery is not "standard" or court approved.

If amount in controversy is less, use fewer and less expensive experts.

Eliminate depositions when possible. Eliminate experts when possible.

Limit depositions. Use non-treating physicians who charge less to testify.

Informal document exchanges through cooperation with opposing counsel. Sharing on the cost of obtaining medical records. Taking telephone depositions of out of state witnesses.

But in discrimination cases, which are brutally opposed, costs are driven by the motion practice of the defendant in opposing discovery, digging up lifelong records on the plaintiff, and getting multiple medical experts to fight "emotional distress" claims.

I do not hire expensive experts in smaller cases or assert certain types of damages claims that may be valid, but would cost as much or more to pursue as winning the claim would net. Again, in personal injury cases the biggest costs are medical records and medical testimony. Now that doctors have gone to electronic records, for instance, there is so much cut and paste that the same entry may be repeated five or six times in one set of records. Three visits that used to be one one page are now taking over a dozen pages and so much extraneous information is pasted into the records and now all of the doctors use copying services that charge more too. UW doctors charge \$2,500 just to have a 15 minute phone conference with their patient's lawyer, then get on the phone 30 minutes late and don't have their patient's file with them. Defense lawyers and insurance companies know this, so instead of settling, they drag things out to wait and see if an attending physician will even testify. Imposing another court rule limiting the number of depositions or interrogatories or imposing a written doctor's report requirement won't change any of this.

Sharing document retrieval services to split costs, agreeing to take deposition testimony by telephone of out of state deponents, agreeing to e-service of motions and other documents.

Sometimes have clients obtain medical records. Most often they are charged less than I would be.

Requesting only discovery that is relevant to the litigation and not engaging in witch hunts

I take cases on a contingent basis. So if I waste time it is money out of my pocket.

File smaller cases in district court, where the experts and doctors can testify by declaration, and where that cost is also taxable.

Filing in state district court is about it, there is not much else available. Some defense lawyers will cooperate in things such as allowing the video taping of depositions by counsel or an assistant rather than professional videographers. Basically every personal injury case is defended the same irrespective of what is at issue.

Provide timely and complete responses to written discovery, avoid motion practice, reduce time for depositions to what is truly needed for discovery on the issues at hand.

Don't bother with much more than RFAs if RFAs do it.

Try to make agreements with opposing counsel to share discovery costs

In many cases, do not take the deposition of opposing expert witnesses, assuming I have a report from them.

Although I think we try to save in any situation where we can provide the client service in a less-expensive manner, obviously we do not do as much discovery, or hire as many experts, when the amount in controversy is small or the issues simple, simply because it isn't necessary. Even in big cases, we try to avoid duplicate discovery among co-defendants if we can coordinate early on, and we try to share experts when we have a true unity of interest.

Share/split costs of certified medical records with opponent. Attempt to reach electronic service agreement with out-of-town counsel. Use written discovery to narrow as opposed to depositions. Avoid private mediation unless insurers pay for completely - otherwise encourage direct and candid

negotiations in writing.

We have the client try to do a lot of the legwork, research and effort involved in discovery. This has worked well for us managing costs. We also strive for early resolution of disputes which usually benefits the parties (not the lawyers).

We self-limit the depositions sought and subpoenas to non-parties in a relatively low-value case.

We prioritize importance of depositions and do not depose every witness.

not depose experts when you know their likely testimony.

Confer with client at completion of minimum amount of discovery to decide if additional discovery needed.

Try to adapt discovery to the complexity & issues of the case rather than do the same discovery in each case.

Only propound reasonable discovery. If opposing counsel issues oppressive discovery, try to resolve issues with a call or, if necessary, a motion.

Limit the number of depositions taken and will forego CR 35 exam in case where stakes are low.

I only send out discovery I actually NEED. I don't send interrogatories just to send them.

We try to put off extensive discovery if there is an opportunity for early mediation.

Discussions with opposing counsel to limit the scope of ESI to be reviewed; extensive efforts to resolve discovery disputes without engaging in motion practice; staying discovery to complete early mediation.

Encourage MAR and advise clients not to request de novo trials from adverse MAR decisions.

Do not use CR 35 examinations in every case. Use these sparingly.

Minimal use of depositions, obtaining documents by stipulation

Help the client understand the cost vs benefit. Try VERY HARD to enlist opposing counsel's cooperation.

Limiting depositions to those that are essential; keeping client in the loop on discovery decisions

Mostly we attempt to defend from intrusive and burdensome discovery from opposing party/counsel. Interrogatories only when subpoenaed info is insufficient, rarely are depositions ever effective, they are more to harass the deponent into settling before the deposition, or to use "scare tactics" during a deposition - having little or nothing to do with the issue at hand

Ordering outside counsel (often with no effect) to reduce the scope of discovery. Using outside (non-law firm) document review services.

Rely on client's knowledge; limit discovery issued. Require client to pay up front.

Narrowing of discovery requests and more use of restrictions on evidence used.

Cost/Benefit analysis

I don't waste time on fishing expeditions. I offer stipulations in lieu of discovery responses.

Voluntary exchange of information and voluntary delivery of data to experts.

Focus on the key knowledgeable individuals in the dispute.

It depends on the client's wishes. No special techniques.

Avoid conflict with opposing counsel, even if that means producing more information than is requested or required.

When possible, seeking areas of agreement to focus issues in controversy and avoid unnecessary discovery on side issues.

On larger cases involving ESI, I have tried to negotiate an ESI search protocol with opposing counsel or made a reasonable determination about what is relevant to that case. I have contracted out some review work.

Informal discovery

work with opposing counsel

I often forego interrogatories. I often interview witnesses instead of taking their depositions.

figure out the elements of each claim and pinpoint discovery designed to smoke out the facts.

Sometimes no discovery.

Sometimes I get opponents to agree to skip written discovery and just do mini depositions that are kept open by agreement. In most personal injury cases, a 45 minute deposition (plus the medical records that are usually produced pre-litigation) are sufficient for purposes of evaluating witnesses and making sure your records are sufficiently complete.

When defending injury cases, I tell opponents not to send me a zillion RFAs on the medical expenses. Just send me a list of what you are claiming. I'll admit that they were incurred, and identify the ones I agree are related and reasonable, and I'll tell them which ones are at issue. It saves both sides time.

Foregoing depositions; "informal discovery" with lawyers I know and trust.

Any lawyer can try to do everything. It takes an experienced attorney to safely decide what areas can be left alone.

1. informal requests for information and documents, followed by formal discovery if necessary

2. specific, and tailored discovery requests

Confer with client and prioritize discovery plan.

I do substantial informal pre-filing investigation. I issue interrogatories and requests for production promptly. Based on the responses (and largely a failure to respond by defendants), I determine the least amount of depositions possible to do the case.

Not do it (with CYA letter) if there is no significant risk of unknown information. Depositions only if essential. Limit RFPs and rogs to minimum necessary, and mostly standard form.

Being selective in which depositions I take.

Limited discovery and try for mediation/arbitration ASAP.

Less time and actions in discovery.

I don't have any techniques, per se. Our discovery is governed by how aggressive an individual is who is suing the County.

budget discussions with client

Mandatory Arbitration Rules do this for smaller cases in Superior Court

Low stakes where most facts are known or evident will lessen the need for expansive discovery

1. Do depositions closer to the date of trial.

See previous comments re: High costs of multiple experts - sometimes do not depose as they'll dismiss experts and/or "fix" testimony for trial -

scary though, am I going to get sued for not pulling out all the stops ?

I tend to not engage in much discovery, and when I do it is after serious discussion with client.

Early mediation. Limited or no depositions in small cases.

Negotiations with opposing counsel

If I can get responsive answers to interrogatories and get complete production of documents, we often agree to go to mediation without depositions, or only the deposition of the plaintiff, to learn whether we can settle short of spending money on full force discovery.

less depositions

Sometimes don't even do discovery and make decisions based on information provided.

Target questions to the actual issues

I do as little as discovery as possible. I rarely send out interrogatories, while opposing counsel will sometimes send them out automatically in cases where they really aren't needed. I have been practicing family law for 12 years and I have yet to take a single deposition. In short, I settle almost all of my cases, and have less than one trial per year, on average. And I have always maintained a very busy and successful practice.

In cases involving less controversy, I conduct fewer, shorter depositions. I forego or limit experts. I

limit written discovery.

very difficult

Try not to use "canned" interrogatories. Try to focus inquiries to the actual needs of the case.

Focus on what we really need to move the case forward.

Limiting number of discovery request.

common sense

Tailor the discovery requests to the issues in the case. Depose only the important people. Try to work out discovery disputes with opposing counsel to avoid motions regarding discovery issues.

Stipulations to values of assets, stipulations to use realtors instead of appraisers, mutual exchange of financial information, access to experts by opposing party's experts

Don't ask stupid questions that have no bearing on the case.

Simply by keeping in mind what is at stake for the client.

Limited depositions

I only represent poor people! I understand what costs are. Often I do things myself to save money.

Narrow the issues.

Move for Summary Judgment

I mostly practice Federal Administrative Law which is very tightly controlled and precludes most discovery or the problems associated with it..

Only when necessary.

Interrogatories are targeted towards issues in the case- pattern discovery is discouraged.

common sense in keeping track to dollars; e.g. cannot run up \$20K in discovery in a \$5K case and expect to be paid or keep your client.

Subpoena Duces Tecums are cheaper and less costly than interrogatories.

Try to but it usually doesn't work

Use of interviews and informal investigations instead of formal depositions or subpoenas.

more than just worrying about it being proportionate - I try to limit discovery to that which is truly needed rather than overdoing it just because it's possible!

I try to engage in informal discovery wherever possible. In Dependencies 95% is informal based on judicial expectations. In family law I also try to engage in informal discovery. I phone conference with counsel to narrow the issues. I encourage clients to settle from day one. 99% of my family law cases do settle. The ones that do not always seem to include DV, or mental illness, or substance abuse, or abuse or severe neglect of the children.

each case has its own process and is much dependent on what records the plaintiff will provide. There are too many roadblocks to getting full disclosure of records and gamesmanship. Interrogatories are obfuscated with little to no enforcement by the courts. Statements of Damages are similarly obfuscated with no enforcement mechanism in the statutes.

I practice in a county in which most attorneys cooperate with each other. In most cases formal discovery is not necessary. We ask each other for material and we provide it. The legal community is small enough so that we know which attorneys will not cooperate and therefore which attorneys require formal discovery.

Have a written discovery plan with estimated costs. Evaluate each possibility for effectiveness

Amount of time spent on document discovery. Number of depositions. Early mediation.

This is an adversary system -- the other party may use e discovery to extort a settlement

limit depositions and document discovery

early settlement

I restrict questions to issues pertinent to the particular divorce case, rather than filing a blanket interrogatory that includes questions that aren't relevant, like asking about trust income in a case with minimal assets.

only doing what is necessary; not trying to be duplicative or waste time to increase workload

Informal discovery pre-filing, expert declarations rather than reports

Engage opposing counsel in voluntary exchange of documents early in the case, attempt to bring dispute to mediation very early in the case, use of "standard" interrogatories, use of requests for admission, file a summary judgment motion if possible to cut to the chase, settle case or get an order disposing of or limiting issues for trial.

Fewer experts and depositions

Cost , risks vs benefits

Use of forensic examiners in injury claims to avoid calling multiple treating physicians

Early case review and analysis of pertinent areas of discovery and likely sources of the relevant information.

I start with rogs & rfps and if they are not responsive, I will send subpoenas to 3rd-party custodians. I rarely take depositions because of the expense.

I rarely depose witnesses.

Mediation

it is sometimes far less expensive to issue Subpoenas to financial institutions to obtain records than to pursue a party to produce the documents. the fees charged by the banks are less than the attorney fees incurred enforcing the civil rules for discovery

agree with client on plan, which invariably comes down to cost/benefit

Try to limit ESI

Request counsel agree to informal discovery.

Specifically designed written discovery to determine scope of the issues with check the box or yes and no questions followed by detailed written discovery on identified issues followed by depositions of experts.

I try and avoid games in discovery and I'm not a jerk. They are expensive, don't get you anywhere and judges hate them. Hiding the ball is a waste of time. Also, treating opposing counsel with respect goes a long way to reducing such expenses.

I restrict scope of discovery sought.

Target discovery to the the relevant issues

Question 19

Have you noticed differences between jurisdictions in regards to cost and/or effectiveness of discovery practices?		
Answer Options	Response Percent	Response Count
Yes	44.0%	181
No	56.0%	230
If yes, please describe those differences.		138
	<i>answered question</i>	411
	<i>skipped question</i>	110

If yes, please describe those differences.

I practice in Eastern Washington, and the attorneys seem to be able to cooperate better. In my experience, the attorneys in the Seattle area seem inclined to engage in more discovery games and tactics that don't necessarily help exchange information.

Bankruptcy court is much more efficient and streamlined in resolving disputes.

I understand Oregon has much more limited discovery, without a negative impact on outcomes.

The bigger the city the less likely to cooperate. I strongly suggest picking up the phone and calling

opposing counsel to introduce yourself and create some connection.

California has a far more effective way of hearing discovery disputes. There are more judges - and more knowledgeable and experienced judges - to hear disputes and resolve them quickly.

Jurisdictions with interrogatory limits substantially cut down on costs and time spent on needless/irrelevant discovery usually without harm as the limits can be extended by the Judge.

The federal Courts are much more attentive to discovery abuse

N/A

Pierce County has tighter limits on discovery than King County. I've noticed that cases in Pierce County are less expensive to litigate.

Federal courts do a far better job of controlling discovery and costs of discovery by enforcing the rules.

It's more dependent on the attorney + client than the jurisdiction

The more attorneys in the jurisdiction, county, city, etc. the more costly and drawn out the discovery and litigation process. There are the obvious differences between the state courts' approach and the federal court approach.

Oregon does not allow interrogatories and mandates arbitration for claims less than \$50k

It's more a factor of law firm size than jurisdiction. I have practiced in most of WA Counties and currently practice in both WA & CA. Any time I have a large firm on the other side I can expect that my costs will be extremely high.

I previously practiced in a jurisdiction with presumptive limits on interrogatories, requests for production and length of depositions. There was also a requirement that each party disclose all relevant evidence - which was most effective at reducing game playing and holding down costs.

King County produces the least amount of information in response to interrogatories

Some judges will not rule on summary judgment motions until after all discovery is done. This requires full expenditure on discovery.

An attorney from a much bigger jurisdiction just sent me a HUGE set of rogs. Our judges would be appalled - they weren't edited down at all. Over 50 pages. In a case that is going to settle, and quickly. It's a very expensive CYA technique for the lawyer sending them.

I'm almost always in state court these days, but I have been in federal court and am a fan of "lay down" discovery.

Seattle lawyers appear to be more willing to spend time, and therefore money, more freely than lawyers in the county where most of my practice is located. It has been my experience that lawyers in this county work more cooperatively to try to resolve cases before the costs of discovery are incurred and then to conduct only that discovery that is necessary.

I have begun filing most of my cases in Pierce County District Court because of the limits they have in discovery, lower filing fee, and to avoid de novo appeals in MAR level cases.

Some jurisdictions do a disservice and allow attorneys to continue with discovery gamesmanship. Also, we absolutely need a CR for ESI. Washington is behind the curve on this.

Limitations on interrogatories, number of depositions, requirements for mandatory mediation, etc.

Snohomish and Pierce County courts allow plaintiff attorneys much broader room to engage in discovery practices that are excessive and abusive.

I don't practice in King county as I have not found a spirit of cooperation to resolve the issues but rather discovery methods that ramp up costs. Also, King county has extra court hearing required to file papers on what is happening with discovery, etc. I don't appreciate the court's micromanagement and have never found it helpful for resolution - only extra costs for more hearings or agreed orders to meet the court's deadline.

Snohomish county less rules about discovery makes it more cost effective. Parties try harder to work things out, than King. Overall I think courts need to sanction opposing parties more money i.e. true cost to bring sanctions motions. Once I got \$250 against a party; the cost to file the motion to compel was around \$2,000.

Because of the restrictions in both the discovery process and the strict timelines, federal court has a

much more cost effective system for discovery practices.

As a rule, laydown discovery eliminates some of the added costs of discovery.

Each court sets different limits and constraints on using discovery devices.

Washington is among the highest-cost jurisdictions because it has the most liberal discovery rules and the easiest availability of discovery sanctions, encouraging litigation of even minor discovery disputes.

King County is the worst, primarily because of the poor quality of the bench

A predetermined case schedule (such as King County Superior Court issues on the day of filing) helps keep parties on task and saves some legal expense.

This is mostly dependent on the market/venue- some venues have a higher cost than others, which is typically proportional to the economy of that particular venue.

obviously district and municipal courts have reduced costs associated with resolving cases as does the MAR

Federal court limits the amount of interrogatories and also imposes deadlines for discovery.

federal courts are less tolerant of discovery gamesmanship

Some jurisdictions place limits on the number of rogs, rfps, etc. This can be helpful. Some jurisdictions are more willing to enforce discovery rules, including sanctioning bad conduct.

I am also licensed in Oregon and with no expert discovery there discovery costs are substantially less.

King County appears to be more expensive and frustrating in all matters

Oregon's practice of not permitting expert depositions greatly reduces costs. One of the greatest cost driving factors in large cases is the need for expert reports. In Federal Court, for example, the costs of large cases have been driven up by the need to submit reports and the number of ridiculous Daubert motions that have become standard in major cases. When an expert is retained in a major Products Liability case, for example, the expert charges a retainer, when he/she prepares a report they charge a significant sum for reviewing everything and preparing the report, when they are deposed this fee occurs yet again, and at the time of trial it occurs again. The requirements of early reports has created a huge cost increase in these cases and occurs at a point at which discovery may not be completed so that a risk exists that , by leaving something out of a report, an expert may be prohibited from testifying at trial on that issue. Costs have been greatly increased by the report requirement. The large defendants know this and try to run the plaintiff into the ground by creating huge cost incentives to continue with the claim. Daubert motions that require expert declarations are becoming standard and, essentially, another round of reports (in the form of declarations) is necessary. The courts should carefully watch this as Plaintiffs are being required to spent \$300,000 to \$500,000 in costs to maintain a major claim. Daubert is an unnecessary step that should be eliminated except in the rare case where the concern raised by that case actually applies.

District Court discovery is limited and far less costly

King County limits the # of interrogatories and depositions. This helps. But limiting the # of interrogatories has led to an explosion of requests for production, which are just as time consuming to respond to as interrogatories.

In Oregon you just show up and start shooting.

Where relevant discovery is required to be automatically exchanged very early in the case.

Instead of formal Motions to Compel, a judge in federal court in Spokane handles them by phone without the need for formal motions (as long as the moving party is willing to waive request for sanctions/fees).

King County handles motions to compel without oral argument.

The smaller jurisdictions provide more flexibility with respect to timing of discovery.

It is random but limiting electronic discovery in low-stakes cases is important.

Federal jurisdictions are MUCH more efficient at completing discovery. State court judges seem unwilling and/or inefficient at resolving discovery disputes and as such the process is subject to shenanigans at the state court level.

Federal rule that requires prompt disclosure of all relevant evidence without request

Thanks to mandatory arbitration, discovery in state court is generally less burdensome than in federal court.

Rural jurisdictions seem to be more willing to agree on disputes rather than resorting to motions practice. Haven't practiced enough in other jurisdictions.

Oregon is great. No discovery.

Courts by local rules restrict discovery and in my experience it disfavors the plaintiffs' who carry the burden of proof. Courts should award terms for discovery abuses. If problems exist in discovery, then it is the responsibility of the bench to correct the same. You can not court rule away abuse.

In some jurisdictions, parties can submit prepared affidavits of experts and rogs/reqs in lieu of expert testimony at bench trials such as those for L&I. That limits the extent to which self-insured bastards have incentive to "spread" -- i.e., raise every feasible question or doubt -- however improbable -- for the sole purpose of forcing the injured worker to spend time and money to address every non-issue raised. Why do they do this? Because in some few cases, it actually works, but over the long term, they know that they serve a deterrent to claimants and claimants' lawyers to even seek benefits.

Snohomish County has very little rules including no limit on requests for admission. I was served with 265 requests for admission in July 2013 in a simple personal injury auto accident case. Defendants are harassed by this tactic from plaintiff attorneys.

Federal Court is all electronic filing and service and also deadline is until midnight - this helps a lot in reducing discovery battles and motions as well.

Federal Court more expensive with expert reports required up front.

King County Superior Court imposes so many deadlines on a case, and now they are getting shorter, so that it seems all you are doing is trying to meet those deadlines rather than engaging in discovery when it makes sense to do so, when you have been able to gather underlying information first either informally or formally.

Except that the Federal "lay down" discovery at the beginning could save a lot of motion practice and attorney time.

Federal cases are more expensive because they require written expert reports, which means hiring experts early and often hiring consulting medical experts because attending physicians refuse to comply with the federal rules and write reports.

smaller counties, smaller costs

Other jurisdictions enforce the limited discovery rule. This includes limiting interrogatories, depositions and the length of a deposition. Overall it can reduce cost but in complex cases serves as an impediment to effective litigation.

Oregon has no discovery, costs are much less than up here

Federal courts do not allow discovery until after "initial disclosures" have been exchanged. This reduces the amount of time for discovery and creates expensive bottle-necks. It also reduces the amount of time for parties to evaluate and settle cases.

Federal courts also have more strict and early deadlines for discovery than Superior Courts. This can be a good thing because it prevents parties from delaying discovery until the last minute. In theory, this should make it easier to settle cases prior to trial. But I am not sure if this is the actual result.

In Snohomish the commissioner hears motions. This can be waste of time because some attorneys automatically appeal if they lose and then you have to do it again in the trial court. Also, Snoco does not allow testimony by declaration in district court. Both of these increase the time and cost of litigation and discovery.

Federal Court reduces cost by limiting written discovery and requiring mandatory disclosures.

I did some work in California, and they have pattern interrogatories for all civil cases. Very handy.

More thought goes into interrogatories and depositions (and everything else) when there is a limit in quantity or time.

Less expensive in counties with electronic filing/service and tight discovery schedules like King County as opposed to Whatcom County where there are fewer means to reduce the operation costs to a client when there is out of town counsel in particular.

Attorneys in larger firms in the Puget Sound area, specifically Seattle, tend to use the scorched earth approach to discovery.

Oregon, no expert discovery

Interrogatories and RFP can be abused if not limited in number.

Costs are much higher in jurisdictions with no discovery limits/controls.

Counties with a rigid case schedule order end up resulting in higher costs of litigation. In short, with a discovery cutoff and witness designation deadlines, I suspect sometimes discovery that could be avoided is done simply to satisfy the rigid deadline. The better practice is in counties where the parties tell the court discovery is done and we are ready to set the case for trial.

E-discovery issues come up more in federal court or in the larger counties. E-discovery is less likely to be an issue in small counties. While not always the case, in my experience, attorneys in smaller counties have also tended to be more cordial and work towards an agreement on the amount of discovery sought.

King County and federal courts enforce their rules regarding discovery. Therefore, the cases in those systems have far fewer discovery disputes and those disputes, if any, are resolved quickly and efficiently.

Oregon's limited discovery makes cases much cheaper to prosecute and defend. The tradeoff is of course that cases are harder to evaluate.

We have a national practice. Discovery in Washington is far broader than in other states, leading to a significantly higher cost of litigation compared with other states.

Way better/faster/cheaper to have court systems with electronic filing/retrieval (ie. King, pierce). Pierce especially is excellent.

Federal is cheaper

In jurisdictions where there are no limits on Rogs, we have seen excessive/abusive discovery.

Yes. State superior courts are not as willing to grant protective orders and limit the scope of discovery, particularly ESI.

Mandatory written reports for experts in federal court increase costs, as these witnesses are also routinely deposed.

Some jurisdictions have discovery rules that aren't enforced by some judges. Opposing counsel takes advantage of this by not complying with discovery deadlines, which results in expensive motions to enforce discovery.

Los Angeles is terrible.

Some counties really discourage discovery. It keeps costs down but if there is no settlement, trial is a free for all.

The limits placed on discovery, ie, limiting the number of interrogatories lessens the time spent in responding to discovery.

I don't practice in different jurisdictions, just different venues. There are differences among the counties.

Some King County judges are reluctant to place any reasonable limits on discovery, which can result in runaway discovery costs. In some other counties, as well as federal court, judges will attempt to place reasonable limits when necessary.

The Federal requirement to turn over everything relevant without being asked is very helpful so that you don't have issue very broad discovery requests hoping to get what may be hidden

expectations more consistent in federal court

The US District Court for the Western District of WA has been a leader on these issues and seems to be more attuned to the challenges facing parties in cases involving ESI -- including many employment cases. Neither side is served well by overly broad productions of ESI that must be reviewed by both

sides.

some courts have significant restrictions while others do not.

Compare Oregon's discovery practice to ours, and Oregon attorneys seem to get along just fine without doing nearly as much discovery as we do.

Courts which place significant fines and sanctions for discovery abuses help to ensure that everyone plays by the rules and discovery is answered quickly and efficiently.

Federal courts place stricter limits than state courts.

Oregon no ROGS and no expert discovery at all. It takes some getting used to, but it isn't all that bad. I think we could consider limiting expert depositions here, but I think it still makes sense to give MEANINGFUL written disclosures.

Federal court does not allow early discovery that can be commenced with the filing of a lawsuit in Superior Court.

Federal courts are much more willing to manage cases before them.

Higher in King Co. than in smaller counties.

Federal court judges enforce the discovery rules. Few state court judges are enforcing the discovery rules. The state court judges complain about the time in motions practice, but rarely enforce the discovery rules, so this incentivizes defense lawyers, particularly in medical malpractice and employment, to take the risk of failing to disclose experts, etc. timely. Also, in employment cases, the bulk of discovery is in the hands of the defendants (such as by statute, payroll records) but I have yet to see a defendant produce all such information promptly in response to basic requests and requests for production.

Rural areas have a culture of much less being done, and therefore lower cost.

Much broader ESI pursued and allowed in Federal court.

Oregon - no interrogatories and no expert depositions

Snohomish County - no case schedule and allows ambush jurisprudence

WA allows a lot more wasted time and dilatory tactics from counsel.

Different Courts have varying practices relative to dealing with discovery limitations and time extensions
federal court clear rules enforced

some superior court judges more experienced than others

Pattern interrogatories

The jurisdictions that let the lawyers manage their own cases are more cost effective.

I kind of like the federal system where there are mandatory disclosures.

Yes. King County judges never - and I mean never - sanction a party for discovery abuses. If the threat of sanctions was real, parties would be a lot less inclined to write overreaching discovery and supply bad faith answers.

For construction cases, a joint repository for everyone to deposit copies of their project files so people can just go review all of them and know that they are a complete file copy for the lawsuit.

Federal courts often have discovery dispute resolutions that are more effective and efficient than state courts.

Federal Court much more expensive

Federal courts make discovery issues very easy to address and resolve.

Where discovery is unduly limited, there are more unjust results.

Big city firms, especially west side of the state seem to do much of everything by the pound.

Federal courts are much more effective at controlling costs.

I see some counsel from other counties pile on discovery even when it's not necessary whereas in most cases I try to voluntarily exchange information that is going to be required anyway and avoid discovery costs that are really not necessary - thus assisting my client in protecting their resources. I see others do just the opposite - refuse to do anything voluntarily and unnecessarily run up costs!

District court procedures are not user friendly.

The larger counties, especially King, are more formal and therefore the cost of litigation is higher there. One easy way to lower costs is for attorneys to cooperate with each other and not try to take advantage of the rules.

Usually we are plaintiffs seeking to uncover the truth from defendants that are doing everything possible to obstruct discovery.

Federal takes longer to get started but lay down rules make major discovery easier.

mannerisms used and costs of experts and attorneys and costs; rural counties versus non-rural

Initial disclosure requirements in federal court speed up and make the process less costly in many cases.

Some jurisdictions allow too many experts on the same issues/opinions.

Oregon's system is much more efficient and inexpensive. Cases settle just as often and the attorneys who practice in Oregon are much happier with their system.

Federal Court early lay down works well.

SDNY appears to be at the forefront of trying to effectively manage ESI discovery.

Discovery costs and effectiveness always seem better in federal court

King County much more expensive to conduct discovery

Snohomish county punishes you in a discovery motion by putting you at the end of the commissioner's docket--if you file a discovery motion you get to listen to folks being evicted, being divorced, being anything but your case. That is persuasive to me.

some counties have strict guidelines;some, like Yakima, have none

The major differences I find are in how individual judges handle discovery. There are great disparities among judges and little appellate guidance on many issues. Moreover, there is great disparity in whether trial judges pay much attention to appellate decisions since discovery issues are usually not pursued on appeal anyway.

fed court is MUCH more expensive because of the requirement that experts prepare detailed reports

WA and CA are markedly more expensive than OR. OR does not allow interrogatories or expert discovery

Federal court cases cost much more to prosecute, which is why large insurance companies like to remove cases there.

Question 20

Are there cases that you would not take because of discovery-related costs?		
Answer Options	Response Percent	Response Count
Yes	57.4%	237
No	42.6%	176
If yes, please describe cases you would decline because of potential discovery costs.		161
	<i>answered question</i>	413
	<i>skipped question</i>	108

If yes, please describe cases you would decline because of potential discovery costs.

When I opened a solo practice I decided to stop taking personal injury cases and workers' compensation cases and Social Security appeals on contingent fees because I cannot afford to advance the cost of discovery and cannot competently represent clients without discovery.

Construction litigation, contract disputes with poor documentation, insolvent defendant cases.

any case involving extensive ESI or document discovery

Cases where the cost of discovery will likely be much larger than the damages recoverable.

Out of state or country real property and/or business interests unless client had funds to support case.

If the client says they cannot afford to pay the cost of responding to discovery, particularly electronic discovery.

My practice is very small and I never have taken high stakes cases

If the range of recoverable dollar amounts approaches or possibly exceed the costs.

Real estate fraud

But every case must be evaluated by the cost of litigation and the amount in controversy. Cost of litigation can be lawyer time as well as out of pocket expenses.

The decision is the client's, but I'll advise if the overall costs of litigation (incl. discovery) is inordinate relative to the issues and values at stake.

N/A

Most of what we handle are business or real estate disputed. Oftentimes the amount in controversy is under \$50K. Most clients can't afford litigation over those amounts.

I practice family law. There are times where I will decline to take a child support modification case because the cost for me to represent the client and perform the necessary discovery to do my due diligence would exceed the expected benefit to the client. In those cases I will refer the case to an attorney that may be less expensive.

I have low income clients that simply can't afford much discovery. If a lot of discovery is needed, I can't afford to help them.

Products liability, medical malpractice.

When the amount in controversy is going to be exceeded by even the basic necessary discovery, I so advise the client. I tell them that they will likely be out-of-pocket even if they ultimately "win," and that I don't want to see them go through that. I suggest immediate binding mediation if agreement for same can be arrived at. A good mediator is going to know what is going to show is the discovery anyway. Much of what is "discovered" is never used in court or arbitration, or it isn't considered relevant by the judge or arbitrator anyway.

There are more cases that I SHOULD decline.

There are a couple of attorneys who beat cases to death. I avoid dealing with those attorneys.

Obviously, if the burdens of discovery exceed the likely potential return...

I am no longer taking medical neg claims as the last two that I had I advanced costs of approx. \$65,000.00 in each. Other lawyers handling med neg claims tell me they advance over \$100,000.00 in costs on an average case.

Construction disputes

Document or fact intensive cases with potential large recovery but marginal likelihood of prevailing, particularly if client is going to balk at the discovery and trial preparation expense.

I won't take any case where there is less than \$200,000 or so at stake. If the case is discovery intensive, the threshold is higher.

Some litigants believe that other spouse has dissipated or hidden assets, but have neither the financial ability nor enough basic information regarding the asset to make research/tracing the asset possible.

Cases where the costs of discovery will likely exceed the expected damage award.

Medical Malpractice cases. Costs for experts and records are too high.

Fact-intensive cases requiring review of tens of thousands of pages of emails and documents.

Discovery requiring extensive computer-related forensics and experts.

See # 19 above

Cases that need experts our organization has no funds.

Cases that involve a dispute of less than \$100,000 are not worth taking because the client could end up paying that amount in litigation/discovery costs before we even get to trial.

No, but increased discovery costs require early, full disclosure so that clients can better evaluate potential litigation costs

It is hard to say at the early stage how complex discovery will be for a plaintiff. Usually it is the defendant that has most of the relevant documents. Hampering a plaintiff's ability to use discovery can restrict their access to full recovery.

If they are a low income client and can not afford extensive discovery.

Small PI cases

Depends if the case is marginal.

If the cost outweighs the amount that is being litigated and/or outweighs the recovery potential.

Many medical negligence cases have clear liability but smaller damages that do not justify the huge costs it takes to resolved these cases

Medical malpractice and other cases that require the use of very expensive expert witnesses.

Of course. Some cases may require highly specialized discovery or review of many thousands of pages to recover a relatively small sum.

I wouldn't have the resources to take on a litigious major head injury case.

Pharmaceutical and product liability claims

Certain Med Mal cases

See my above answer. Medical Malpractice cases are generally not taken where they involve damages under \$1 million because of the costs of discovery and the huge advantages possessed by the defense bar in terms of ability to get experts etc. In any major case the potential cost has to be balanced against the potential recovery. We are beginning to see the end of mid range cases. Even if meritorious, the cost of such cases cannot be justified.

Many small med mal cases you cannot take because the cost (for experts) would as much or more than the potential recovery.

Medical malpractice, civil rights, some employment and personal injury.

Medical Malpractice cases as very expensive, as well as any highway defect cases. It is hard for a smaller firm to handle any of these claims because of the cost associated with them.

Low impact injuries of poor clients

Med mal

disputed liability and relatively low damages (50K or less)

Medical malpractice cases; cases that are going to be expert-intensive multi-party and extensive documentation

where discovery costs exceed 10k and client unwilling to advance costs.

I have rejected many medical malpractice cases over the years on that basis.

As a plaintiff attorney; small cases that would have obviously large costs.

where costs likely would exceed probable judgment

Cases where the client is likely to lose money because costs of prosecuting case probably outweigh potential benefits

Mainly medical expert costs are too high, or electronic discovery costs are too high.

costs associated with receiving medical records.

As I mentioned above, premises liability cases are much more contentious and typically involves my having to go to a judge at least once in the case over discovery disputes. Because I work on a contingency basis, the amount of time I have to dedicate to discovery nonsense is never really compensated unless there is an order of sanctions which has had to occur in order to force compliance. Generally, there are repeat CR 30(b)(6) depositions because defense counsel provides a deponent who answers "I don't know" to most questions despite a three page deposition notice detailing what will be asked. So for these types of cases, I only take them if the injuries are extremely bad to justify the additional time I know it will take to get discovery.

In a number of cases, the client simply can not afford the cost of litigation, and a large percentage of

those cases the largest cost is discovery.

Have advised clients that likely costs unrecoverable in litigation exceed value of claim

Medical negligence cases with anything less than high damages and clear liability.

I would not turn a case away because of perceived discovery costs, but would discuss with the client the reality that their case may suffer due to inability to deal with discovery cost issues.

not necessarily discovery-related costs, but costs in general. Many cases don't justify the \$100,000 or more in costs it takes to bring a case to trial.

Product defect claims

Med negligence; limited damage cases

possibly some soft tissue cases with minimum property damage, but more likely to file these in district court

Medical Malpractice cases are ridiculously expensive and many many people with very legitimate cases are not getting there day in court because carriers can outspend with experts and costs. Most lawyers therefore do not handle these cases. It makes handling these cases ridiculous since carriers know they win 90% plus of these cases. 100,000 plus deaths a year from med mal and we lose 90%. Go figure.

Any Med Mal case where a plaintiff eventually recovers from the medical negligence. Any Med Mal case with an expected jury value of less than \$300,000. I have been defending injured workers out of a sense of morality and civil justice, to the tune of about 140 hrs per case, and a net loss of about \$10,000 per case in expert witness fees. But I am almost personally goddamned bankrupt from doing so, and I am going to have to stop doing that soon so that I can spend more time on some Med Mal cases to build a war chest from which I can continue to fight injured workers' appeals.

Cases where various institutions and witnesses may have to be served subpoenas simply to retrieve documents critical to the case and where there are a number of key witnesses which increases the number of depositions and discovery

Smaller damages w/ lots of liability and medical issues.

Complicated medical malpractice cases on liability are often precluded by the cost of discovery and expert testimony.

My war chest is about \$50k

My firm does only medical negligence cases. We cannot afford to handle smaller cases because of the cost of experts and discovery.

Those with a large amount of expert witnesses required.

Medical malpractice and class action.

Small PI cases for plaintiffs with extensive pre-MVA medical history. Also generally try to avoid Pierce County since too hard to get a firm trial date. Cannot justify taking a meritorious medical negligence case to trial absent death or permanent disabling injuries.

Employment discrimination cases with need for medical experts, known defendants and defense attorneys who use extreme "sanctions" threats against counsel,

Small cases with only a few thousand dollars in controversy are too expensive to litigate.

Injured client with significant pre or post, non-claim related injuries and modest claim related injuries (cost of obtaining all medical records prohibitive), Multi-party defendants with modest value claim, Difficult/high risk liability question requiring extensive experts.

Medical malpractice cases are certain to be exorbitantly expensive in terms of deposing treaters and experts. Many acts of negligence are not pursued because they are not economically feasible

Cases that will involve multiple experts but appear to be of minor value.

Where the amount of recovery will likely be less than the cost to maintain the suit. This is especially true in med mal cases where the negligence is clear but the defense won't settle because of the need to "punish" the plaintiffs bar to bringing cases in general.

Complex, high dollar value cases give defense counsel a reason to make discovery much more difficult than it should be. This makes those case more difficult and expensive.

A case with a lot of different medical providers and difficult diagnosis to prove.

We frequently decline all manner of cases because the litigation costs will be too high, particularly the cost of depositions.

Product liability claims, been there, done that: never seem to turn out

Premises liability cases. Low-moderate damages cases.

Cases with value of less than \$5000

Medical malpractice cases

I represent injured workers. Many times they are confronted by a self-insured employer who has apparently unlimited resources for litigation. This creates a very unfair imbalance of resources.

The only time this shows up in a defense practice is when there is a doubt that you can get paid, usually an un-insured client in a case such as a product liability case where you can anticipate a lot of discovery and the need for experts in products and usually medicine, as well.

I limit the number of medical malpractice and larger cases I will take at a time unless a client is able to afford to advance deposit funds for future costs to stay protected from adverse outcome and becoming overly vested in any one case from a financial perspective, and from using our line of credit too heavily in any one case.

We won't defend class action matters.

N/A

At least, the circumstance has not yet arisen.

Small disputes without attorney fees clauses in agreements.

But the insurance carrier may not assign counsel or may settle cases because of potential discovery costs

The value of the case against the amount of time (mostly paralegal) & paper in discovery.

Small-dollar matters where it is apparent that a lot of discovery would be necessary in order to effectively represent the client's interests.

There are cases we simply settle or do not pursue (if we are owed money) solely because of discovery costs. Trials are cheap compared to discovery.

I don't handle highly litigated cases because of the cost of supporting them.

Large law firms often engage in higher costing practices and it is better to avoid them as opposing counsel if discovery costs are anticipated to be an issue.

Plaintiff's cases where recovery is based on contingency fee

Any case in which the cost of discovery will make "winning" the case a financial loss.

The possible amount of recovery is uneconomical to the cost of the litigation.

This question is more applicable to plaintiff attorneys, who must be careful about taking on small claims that will involve expensive expert witnesses or voluminous discovery.

Declining cases not an option

Anything below \$20,000 in dispute.

Cases where discovery information is primarily out of state.

Some products liability cases would be a nightmare.

Class actions.

ESI drives far too many decisions. It continues to appall that the judges who make the rules in this area have literally no idea of the costs they are imposing.

Plaintiff's contingent fee cases with low damages where discovery costs could significantly exceed potential recovery for the client.

I turn away cases in which the potential client has very limited financial means and I anticipate either (a) needing to take a lot of discovery to obtain necessary evidence, and/or (b) the opposing party has requested or is very likely to request substantial amounts of discovery. I know that the potential client will run out of funds long before the necessary work is completed, and then I will either be working for free or having to withdraw. Neither of these end results is acceptable for me. This is true even if I believe the potential client otherwise seems to have a winnable case.

If costs outweigh potential benefit to client.

Most medical malpractice cases, as the defense firms, such as [REDACTED], etc. do not follow the discovery rules. It is too stressful and expensive to deal with these firms.

If client needs extensive discovery done but does not appear to have the means to pay.

multiple parties and/or multiple witnesses or fact providers

patent infringement

Cost benefit

Many medical malpractice cases are cost-prohibitive for our firm unless the client can afford to front the expert costs.

Catastrophic injuries with major liability issues against defendant with major assets

We generally get sued in government practice. We don't have the option to reject certain cases.

mold related illnesses

All bases on likely value of case

If client cannot afford to hire an expert -- leaving my firm responsible

Medical malpractice cases.

Cases with small amounts in dispute.

Cases with novel

No smaller accidents please. You got rear ended and your neck hurts? Too bad, no justice for you

Document-intensive business cases involving lots of witnesses are virtually impossible to litigate below a certain threshold in terms of what is in controversy.

I don't pursue cases where my client claims the evidence will be discovered. we want it before we get going

Too little damages at stake to even justify litigation.

huge data base - looking for a needle

Medical malpractice, product liability

Class action litigation

Certain medical malpractice cases due to the extreme cost of many medical experts.

Small breach of contract cases (less than \$25,000).

medical malpractice

Depends on the amount at stake in litigation.

Soft tissue injury MVA where Allstate and potentially Farmers are the tortfeasors' liability carrier.

If my client's resources are truly outmatched by the other side and the court is not likely to require some contribution to the costs from that other side, I cannot adequately represent the client and therefore have, on occasion, declined to take the case.

If it appeared that extensive discovery was needed and the client was UNWILLING to pay up front and keep paying, I would turn it down due to both malpractice concerns as well as my unwillingness to do yet more involuntary pro bono work.

Yes, if I was a plaintiff attorney and had to evaluate a case, cost and damages are related--often expert costs

Only in contingency fee cases is this an issue

personal injury and med mal cases

Any case involving extensive electronic discovery unless client had a lot of money to spend on it.

Recovery less than costs.

Most smaller cases are either settled for less than they are worth or not taken in at all, knowing what it will cost to go through discovery in WA.

Complex financial case with a large firm on the other side and a well-funded opponent because they tend to bury small-time operators with discovery abuse.

Large number of witnesses, large number of electronic discovery.

Cases with limited potential benefit to my client.

Class actions.

if client cannot afford to pay for it and I think it is necessary to do it

medical malpractice cases with lower damage values due to thigh cost of discovery/litigation of these cases

As a small & solo practitioner I do not take on the huge Seattle area firms known to be abusive users of discovery

There are many; if client has no ability to pay to do the job properly, then I will likely not take the case.

I have not do so.

Med mal -- every expert is a physician who will charge upwards of \$1500/hour for his/her time. Crazy.

Question 21

Do you agree with the following statements? Please rate the statements from Strongly Agree to Strongly Disagree.							
Answer Options	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Rating Average	Response Count
The discovery rules currently in place are not being adhered to and/or enforced.	105	152	97	61	7	3.68	422
If there is a lot of money involved, parties dig in their heels and litigate every little thing.	105	184	82	46	7	3.79	424
Parties are willing to invest more into litigating a case if the stakes are high.	176	206	31	8	2	4.29	423
Discovery costs often induce settlement between parties.	47	193	95	77	11	3.44	423
<i>answered question</i>							425
<i>skipped question</i>							96

Question 22

If you agree that discovery costs often induce settlements between parties, is justice served?		
Answer Options	Response Percent	Response Count
Yes	30.0%	98
No	70.0%	229
Why or Why not?		216
<i>answered question</i>		327
<i>skipped question</i>		194

Why or Why not?

Usually yes.

Only if the parties are in a relatively equal financial bargaining position or if a law firm specializes in cases with potential big payouts, e.g., personal injury, or if a law has been violated and the government steps in to enforce the law.

If a party settles only because of cost, they have not received justice.

It seems increasingly easy to use discovery to browbeat a party with limited means.

Justice is in the eye of the client. We don't have a justice system, we have a legal system. Sometimes, it may not be a fair or generous result, but it is an agreed result and there can be merit to that.

The cost of discovery strongly weighs in favor of settling cases, even those having no merit. Discovery costs should not be driving the resolution of cases.

A bad settlement beats a good law suit any day. Why trust the outcome to 12 people of average ignorance or a single trier of fact who wasn't smart enough to make it as a practicing lawyer?

The poorer party is the one who ends up conceding

I find that discovery costs don't generally induce settlements, on cases where discovery costs would be very high generally the damages at issue are also very high so people dig in their heels because of high stakes. In smaller cases where high discovery costs are not on par with the potential damages generally some discovery still needs to take place even to reach settlement, but if the parties are very contentious then discovery can get out of hand and less relevant discovery requests are made that don't help settlement but contribute to parties becoming stuck in their positions.

Written discovery is used as a tool to increase the other side's costs. This is the exact opposite of justice.

Limits trial on the merits.

once the facts are forced out, or about to be, the holdouts and procrastinators start to get serious about fair settlements. And sometimes, it is the responding party's need to deal with his/her attorney's demand for increased advance fee deposits that gets them focused on settlement.

The cost of dealing with constant objections to producing even the most relevant interrogatories and requests for production can become overwhelming.

There are too many reasons why parties do not resolve things earlier. It is not just a question of discovery costs.

As a form of dispute resolution, litigation is expensive. The expense is obviously a factor in the parties' decisions about settlement. Sure, it'd be preferable to reach an amicable resolution at a lower cost.

but that is the nature of the beast

Justice is not served when a case is resolved by settlement because the court rules make it too expensive for a party to afford to bring its case before a judge or jury. This problem affects individuals, who often cannot afford to pursue meritorious cases, and companies, who cannot afford to pursue meritorious cases or defend themselves from frivolous cases.

Folks walk away from legitimate claims because of the costs.

The answer is actually "sometimes." At times this will help warring parties to realize that it isn't worth the legal fees to litigate what might be small issues that don't necessitate such high investment. Other times it could mean that someone has to "give up" simply because they cannot afford legal representation due to the masses of discovery demands being heaped on them, and in that case justice is absolutely not being served at all.

In family law cases, many times people simply can't afford to litigate, so they settle for less than they deserve.

Discovery is part of the litigation process. Settlements can be induced by the cost of litigation, which would include discovery, but would include other costs as well. Discovery by itself is not an obstacle to justice, but unnecessary or inordinate amounts of discovery can be, just as unnecessary or inordinate pretrial motions can be and just as the maintenance of marginal or frivolous claims can be. The problem is getting the courts to enforce the rules that we have that limit discovery, and impose

consequences on those who abuse the good faith obligation to conduct litigation according to the rules. It depends. If a party gets less than they "deserve" in settlement, then justice is not served. If the only reason they settled is because justice system was too expensive for them to use, then what's the point? If there is successful mediation wherein one of the points is the cost and headache of trial, etc., then that's fine.

Often the point of "discovery" isn't to discover relevant usable evidence for presentation at trial or arbitration. It is used to run up the opposing party's attorney fees and costs hoping to force a settlement or capitulation due to the inability to continue litigating.

Since there are multiple way to obtain information in today's technological world.

The party in the least position of power is the one who usually gives in because they do not have the wherewithal to pursue their case.

Because the winner should not be the person who has more money.

I don't agree with the premise of the question.

The merits of the dispute between the parties is not necessarily addressed, the cost of getting to those merits are what is resolving the dispute.

Obviously it can become a war of attrition, with the deeper pockets often prevailing

Yes and no, depending on economic disparities between the parties.

The avoidance of discovery costs forces litigants to surrender in meritorious cases.

A key component of "justice" is resolution.

Parties who cannot afford the costs of discovery are compelled to settle to stop the bleeding, or they can't afford to proceed.

Parties with more money have an advantage.

The fact that a big party can bury a small party isn't just.

I don't think a person with a \$1 million claim should have access to the courts, while a person with \$50,000 claim has to settle.

Parties need to consider the cost of pursuing their claim or asserting their defense before they charge forward into a civil case. They need to consider the risk they are taking and the cost they are likely to incur before they reach a courtroom. I would agree that some lawyers try to beat an opponent into submission using the costs of the litigation and, in those cases, justice is not served.

It depends. Sometimes, people will settle with a statement regarding good faith disclosure of assets to avoid expensive discovery. In those cases, if something is later discovered, the right is preserved by the statement of good faith disclosure and penalty to party who failed to make said good faith disclosure of asset. In other cases, this is problematic because the undisclosed asset remains hidden or is converted in such a way to make it un-traceable yet accessible to the party who hid it.

A settlement based on the financial constraints of litigation alone is inherently unjust.

feel that the one who has the most money often wins because the other party cannot afford to continue to fight about the issues. this is especially true in child custody cases.

The goal is to get the clients something they can live with and let them get on with their lives.

Sometimes that can only be accomplished via a full trial. However, encouraging settlements expedites the litigation process, resolves matters more quickly, and removes the burden and stress of litigation.

Because as business people, lawyers are put in a position where they have to persuade their clients to accept settlements lower than what could reasonably expected from trial. Not only would the costs of discovery reduce the clients' recoveries but also the lawyer has very real concerns about advancing monies for those costs. In other words, the lawyer's business concerns are influencing the clients' decisions.

Smaller firms are unable to match larger firms/insurance companies funds for discovery and as a result seek a settlement.

Total litigation cost is always a factor in the decision whether or not to litigate a matter.

one weighs the costs of discovery versus paying that amount to settle and get finality to the the matter.

Plaintiff attorneys often use the threat of discovery costs to get defendants to agree to a settlement.

Even if the defendant does not have culpability, it can be difficult to get a summary judgment, so the defendant will weigh the cost of discovery against the cost of a settlement. Where there are contingency fee arrangements for the plaintiff attorney, an early settlement extracted based on the threat of incredibly high discovery costs (and not the merits of the claim) is to the benefit of the plaintiff attorney. That is not justice, but rather a make-work industry that wastes the time of the courts and defendants who should focus on getting their core business/life.

Justice is independent of the reason a case settles in a particular way. Costs of litigation strongly bias the outcome in favor of the party in possession of the money or object in dispute. Because of these transaction costs, "possession is nine-tenths of the law" is the most frequent result. If the possessor is rightfully in possession, then justice is served. If not, then justice is not served.

Sometimes clients settle for less than what they want or deserve because they do not have the financial resources to address all discovery demands. That is not justice.

It's not resolving the rights between the parties. It is holding a just party hostage because they cannot afford to defend themselves.

Often, parties will settle claims that are legitimate (Plaintiff's side) or not legitimate (Defendant's side) simply because the cost of litigating the case will be more than the amount settled on. It seems like Plaintiffs' often know that they can file a claim that may not be a good claim because the Defendant will pay "nuisance value" to not have to litigate it. Similarly, Plaintiffs may not want to litigate or may not be able to find a lawyer willing to take their case for a contingent fee basis if the costs will outweigh the potential outcome.

As between business entities, generally settlements are business decisions, driven by business considerations. One factor in that analysis is discovery costs, but another is overall litigation costs.

Not always. It will often cost more to attempt to gain necessary information on hidden funds than the client can afford to pay.

Cases are usually decided on their merits.

It varies greatly, often because of the temperament of the litigants or their attorneys, as much as the size of the case or the cost of litigating.

Not of it means indigent persons cannot obtain counsel due to the cost.

Because people may become more willing to compromise when they feel more strongly about the costs of discovery than they do about the value of their claims. Those who feel very strongly about their claims, have a lot to recover, or feel strongly about the principles of the claim probably won't settle.

Resolution is not based upon justice but rather the fear of costs associated with fully litigating a case

Someone should not win a case or obtain a settlement just because he has more money than his opponent. Money already drives the legislative and executive branches. The courts are supposed to be the one place where justice prevails regardless of financial status.

Mostly because I don't know what better alternatives there might be. It is a difficult issue, though.

My clients have to consider settlement with the cost of litigation in mind, unrelated to the merits of the dispute. That doesn't seem right, but it's a reality.

DISCOVERY COSTS HAVE NOTHING TO DO WITH JUSTICE!!!!

Not necessarily. My clients do not have the resources and stamina to fight. Excessive discovery tends to alienate clients from their attorney. They do not understand why I cannot stop the opposing party in most cases.

I don't see many settlements that are driven by discovery costs. In a number of cases the timing of the settlement may be driven by discovery costs - a defendant may believe that it makes sense to mediate before incurring certain costs but, in my experience, the mediated settlement is not driven by those potential costs - rather, it is driven by the parties' evaluation of what could happen at trial.

It depends on the situation, but generally speaking no.

Parties often give up when faced with realistic cost/benefit choices... which are in great part guesstimates

In our case, we are a small plaintiff practice. We do not have the huge, endless working capital account that large defense practices have.

It is often times that plaintiffs' and claimants' are "overpowered" by big corporations and the State of Washington, as they have way more resources. Lots of times clients "have" to settle, even with a very good claim, because the other side is willing to spend whatever it takes to win it as opposed to giving what the plaintiff/claimant is entitled to. I have seen some companies actually spend more on costs to litigate than what it would cost to simply pay what the plaintiff or claimant is entitled to. I have seen this as a policy to attack claims in the hope that it will reduce future claims.

Big corporation or insurance always has advantage
a fair result is not obtainable by trial or settlement

Most litigation is a matter of balancing risk vs. reward from the client's perspective. Occasionally, a client will settle because of lacking resources to hire experts, etc. The costs of going to trial are often a factor taken into account in deciding whether to settle or not settle - ie. focus on the net outcome after litigation expenses

A party who cannot afford the increased costs of discovery will often settle short
the party with the deeper pockets usually prevails when costs get out of hand.

Sometimes yes, but not always. Sometimes litigants simply can't afford to continue.

Discovery and litigation costs deter the party with fewer financial resources and too often result in settlements rewarding the richer party's misconduct.

Not really a yes or no question. Very case specific. I recently had a defense case in which the plaintiff was making what we thought was an outlandish medical claim. It was necessary to retain a national expert to debunk the claim. We were effective in doing so; but it cost the insurer over \$50,000 in expert fees (not to mention my own meager fees) to establish that the claim was ridiculous.

defense can afford costs. plaintiffs frequently cannot.

I am wishy washy on this one since my gut reaction is settlements should be based on the facts of the case. On the other hand I have seen some very unreasonable parties become reasonable once you ask for a huge cost retainer in order to finance their lawsuit to the bitter end.

It depends on the case.

The issue becomes what the client can afford. Often the client cannot afford the legal costs of responding to voluminous and frequent discovery requests from the other party who may have more resources.

Not necessarily. Defendants may settle the case because the costs spent on discovery will not justify fighting, even though at the end of the day you would likely prevail.

When a judge orders the turnover of key documents that the defense doesn't want to produce (likely because I suspect that they are hurtful) - settlement generally occurs. Justice isn't served in a true sense because the truth is never known but my client is happy with the result because their case is resolved. The defense generally makes that offer that will convince my client to settle. In a way, justice may have been done for my client, but it was only because the corporation wants to continue hiding documents.

To clarify my responses to question 18 - for the most part, in auto cases, rarely are there any discovery disputes. There may be a DME who charges \$1,500 to have his deposition taken, there is usually a fight over fees, but ultimately, the plaintiff is stuck paying that bill if the deposition moves forward. It is in the premises liability cases where I'm dealing with a corporation that the discovery rules are almost always not followed and judges will usually give the offending defendant and/or defense attorney a slap on the wrist. However, if I go in front of the judge again, sanctions are generally made but even then, those sanctions may not include attorney's fees for my time in having to file the multiple motions to compel.

In most cases the person/party better equipped to handle the cost seems to prevail or at least obtain a better settlement. This is especially true if the litigation involves an insurance company.

This is almost always falls in favor of the party with more money because more money = more staying power. Poorer parties (usually individuals plaintiffs) have to fold first.

Clients see "justice" as a determination a cause of action was right or wrong (depending on the side. There is no such determination when there is a settlement, so both sides feel like the caved in and were not "heard" by the Court.

settlements reached when on party cannot afford the fight typically are not even compromises

Cases should be resolved on their merits, not on the economics of the costs to bring or defend them.

There is always a cost / benefit analysis in determining whether the likely outcome warrants expenditure

Discovery costs are just a subset of the cost of legal representation. For my clients--individual people rather than business or large entities--the whole concept of attorney fees and the cost of expert analysis (me) and expert witnesses (docs, economists) breaks the bank without even getting to the concept of the layer of discovery costs.

Defendants have tons of money. They don't care what it costs to bring a case to trial. They will settle if they think they're going to lose big, but if they have a hope of winning at trial, they will spend whatever it takes to exhaust plaintiff and discourage the next lawsuit.

Discovery allows the exchange of information and allows a more competent evaluation of the facts.

Plaintiff may be more pressured to settle due to discovery costs.

Lawyers have priced themselves beyond the amounts in controversy for many cases.

It's the system we have. If everyone is willing to settle, then justice is done even if one or both party is unhappy about it.

Because in medium to larger size cases costs of discovery don't drive anything.

This might be true in smaller cases.

Because not all relevant information is obtained.

No because people sometimes settle just to avoid costs and if discovery was cheaper, parties who cannot afford litigation might continue to litigate and achieve justice.

Usually. Sometimes defense knows plaintiff cannot afford to do much in litigation.

Attorneys are in a better position to decide what is appropriate and cost effective discovery than the court, or the use of court approved interrogatories.

In medical negligence cases, the cost of effective discovery often leads to unjust settlements.

Well costs in general prohibit plaintiffs from going to trial on a regular basis. That is the argument that is asserted at mediation - it will cost you too much to take this to trial, this offer today is really worth x dollars because you won't have to pay to get to trial.

Settlement should be based on the merits of the case, not the cost to get to judgment.

In my area of practice there is a very disproportionate standard for what discovery compliance is required of plaintiffs. While Defendants object and do not answer, give evasive and incomplete answers, withhold key documents unless motions to compel and repeated demands force them to disgorge, endlessly supplement with overdue discovery, yet the same Defendants seek onerous sanctions if Plaintiffs' don't give complete and detailed responses to the most overbearing and endless and duplicative discovery requests.

Discovery costs only induce settlements when the parties are either very close together in their evaluations of the case -- not making it worthwhile to spend more money fighting -- or one side or the other knows it is going to lose the case. Discovery costs do not drive settlements induce settlements to the extent that the courts or court rules need to change procedures.

sometimes.

Well funded parties use abusive discovery tactics as a way of hiding or obfuscating key evidence in order to 'wear-out' opposing parties. This is typically true of corporate defendants against individual plaintiffs.

Justice is served by the appropriate party recovering--not compelling the little guy to settle because of the burdens of litigation

Because cases are to be resolved on merit and not costs

It is unrelated to the actual controversy

Small plaintiffs/Plaintiff's firms cannot cope with the discovery demands of a well funded defense bar. Sometimes a cheap settlement is better than the alternative.

Some plaintiffs will abandon their claim if faced with the prospect of high unrecoverable costs.

The cost of going forward often spurs the insurance company to make serious efforts to settle cases.

If you start with the proposition that the civil justice system is there for the benefit of the participants, and consider the parties to litigation as the participants, then the system is served whenever the parties mutually agree to resolve the issues and get on with their lives, whether we like the results or not. It's not about us. There are a multitude of factors that may induce a party to settle a case, and I am not certain that a concern about costs is any less valid a factor than "I'm tired of fighting", "I don't want to go to court", or "I want to limit my risk." BUT - "unreasonable" (tough to define) discovery costs are certainly a bad reason to induce settlements, and serve to distort the decisions of the parties regarding why they want to pursue their claim further, or resolve the dispute. Justice is not served by curtailing "reasonable" discovery and encouraging everyone to "roll the dice", "play litigation lotto", etc., either.

I think trial costs and risk induce settlements more than discovery costs, and I think assigned judges able to hold parties feet to the fire in discovery has a greater impact on reducing discovery costs and abuses that also induces more likelihood of settlements.

Civil justice in the United States costs money. The more money it costs to litigate, the less likely parties will use the courts as a method of attaining justice. Litigation seems to only benefit attorneys, not parties.

First, I don't agree that discovery costs induce settlements. Second, I have had opposing parties intentionally drive up discovery costs in order to force settlements, and, when caught, the courts rarely punish such behavior, and when they do, the appeals court reverses. So there is no disincentive to doing it.

In my cases, individual plaintiffs threaten business defendants with overbroad discovery requests and threat of revealing trade secrets. The extra work and possible exposure of trade secrets are not related to merits of dispute, nonetheless drive settlement value.

He who has the deep pockets stands a better chance of winning money should not buy justice

Very few things are certain in litigation. It's a balance of how much risk you are willing to take over the certain result of a settlement.

Cases should be determined on their merits; parties should not be blackmailed into settling based on the threat of exorbitant discovery costs.

A party should be able to clear his or her name if accused of something, and should not have to settle just because the cost of justice is prohibitive.

This really is a case-by- case thing.

no opinion

Because not enough cases are tried to a judge or jury. Employment litigation is an industry. It is not the civil rights struggle for justice it once was. Without significant mechanisms for shifting fees and costs to unsuccessful plaintiffs or substantial limits on damages--most notably plaintiff's attorney fees--justice will continue to lose out. Discovery costs often overwhelm defendants, who are terrified to litigate through trial and seek justice in the form of exoneration.

Propounding discovery is virtually free, and I've never even heard of a judge willing to sanction someone overreaching in discovery. Judges reflexively believe withholding discovery is bad regardless of cost and are amazingly unwilling to hold lawyers accountable for discovery misconduct, unless it is withholding discovery.

If discovery costs induce a settlement then the claim wasn't that strong and thus justice is served a lot of discovery is overly broad fishing expeditions.

Abusive discovery should not play a role in the merits of the claims, which is what settlement should be focused on - the risks to the parties related to the claims.

No. For defendants/respondents, settlement can often be a business decision relating to costs of litigation, as opposed to resolution based on the merits of the case.

This is a complicated philosophical question and the answers vary from case to case. Rarely, however, it justice served because a party runs out of money.

Modern litigation is often a form of blackmail. From the defense side, the defense costs often -- more often than not -- exceed the value of the claim.

A settlement made simply to avoid the cost of litigating - a large part of which are costs of discovery - is not necessarily a fair settlement (i.e., one that a reasonable person would accept if litigation were cost-free); and there unfortunately are lawyers who abuse the discovery process in order to create unnecessary expense for the opposition in the hope that the opposition will knuckle under. Settlements ideally should reflect what is reasonable in light of the strengths and weaknesses of each party's case and each party's own circumstances.

Not at all. Discovery costs do just the opposite--they force those with meritorious claims or defenses to settle to avoid the extreme cost of discovery.

When people have to balance their legal rights against the cost of enforcing them, they don't have legal rights.

Deeper-pocketed parties are not necessarily more just in their litigation goals.

Answer is obvious

Less wealthy parties do not have the resources to fight discovery wars with wealthier opponents.

Because that's a forfeit.

A party unable to bear the costs of litigation will have to bail out - or accept less than they may be entitled to.

Rarely is justice served in family law cases. There are no winners--all are losers, including the parents and children. Some just lose more than others.

Such outcomes are driven more by the inherent cost of litigation than by the merits of the case

Sometimes the case is about public issues, and costs of litigation get in the way of proper resolution

Cases should be determined on the evidence and their merits, not whether the fact-finding process is too burdensome on either side

"Justice" is not the issue in most business disputes. It is a cost/benefit risk analyses.

It is part of the civil process.

If a case settles because a client with less financial wherewithal decides that it's better to settle than to engage in discovery, that's not justice.

It's put up or shut up time: if you want to make a big claim, have the guts to back it up with facts

This question is too general.

In an ideal world, it should be less costly to have a jury or judge decide an issue. Not all cases should settle

In many, many cases, discovery costs are disproportionate -- the individual claimant bears little cost in responding to discovery, and propounding discovery costs very little. The costs born by a responding party should not be a driver of extortionate settlement.

I have not had clients give up their position because of discovery costs. It is a factor in making a settlement decision.

The party who is more likely to acquiesce to the terms of the other party in the face of high discovery costs is generally the party with less money to spend on litigation. This is true regardless of the merits of the underlying claims. In other words, poorer litigants have an unfair disadvantage in negotiations before and during the discovery period. When their money runs out, they face the withdrawal of their attorney(s), and advocacy on their behalf grinds to a halt. It is unfair that the greater wealth of a party confers an advantage in the administration of justice.

It is not just discovery, but the costs of civil litigation are so prohibitive now many meritorious cases are never pursued.

I do not know the answer to the question. I have not taken cases that I think will be too expensive to litigate, and I have never settled a case based upon the costs incurred. My cases have settled b/c after defendants disclose information and/or witnesses testify, everyone is assessing the risk of a jury verdict

for or against them and determines that it is best to settle for an amount which recognizes these inherent risks.

In most cases, parties really don't learn much of significance that they didn't already know (or reasonably expect).

ESI production and review is disproportionately put on the defense. It is ridiculous.

A bad settlement is better than a good lawsuit

Settling because of litigation costs is not settling based upon the merits.

Neutral

In business and creditor litigation the defendant may not have the financial capacity to absorb legal fees and discovery expenses.

Justice should not come down to the winner being the party who can prevail in the war of paper.

restricts access to some deserving clients

A realistic appraisal of expected costs by a party who has experience in our litigation system can outweigh 'fighting for principle'.

To many of my low income clients have been forced to settle for less than the true value of their claims/loss.

Yes and No is the answer. If the case is a small value, then it is hard to justify the burdensome discovery costs, but the amount of discovery needed is usually proportionately less.

In employment cases, defendant employers incur a disproportionately high cost for discovery which often induces settlements that are unjustly high, unjust because the case is frivolous, or both.

Corporations and insurance companies have more money than destitute plaintiffs they have injured

We don't allow results which are unjust, so costs encourage settlements.

Discovery costs come out of the money offered to settle and the money plaintiff gets to collect if they settle, as in the plaintiffs have to pay for their side of expensive discovery too

Too many attorneys = not enough work. Thus, cases that can be settled pre-litigation are not settled because some attorneys know they can leverage the costs of litigation to increase the gross settlement, thereby increasing their net contingent fee. The costs of litigation are passed to the plaintiff, and the plaintiff's net gain by filing the action is negligible to non-existent. Litigation rewards the plaintiff's attorney, and hurts everyone else, while burdening the court system.

Some defendants would rather spend money litigating than resolving a claim

Sometimes, the party without a lawyer

I don't feel that discovery costs per se induce settlements, but rather, simply the soaring cost of litigation period. Especially in family law, where emergencies are everywhere (so we are always on the show cause docket), and though the proliferation of mandatory forms is meant to help the unrepresented, in my opinion, the additional forms only adds complexity and confusion and drives more clients to see lawyers. Discovery is just a part of this overall equation (and in my practice, not the biggest part at all).

I find that insured defendants get assigned defense counsel who litigate everything to death and try to bleed a plaintiff, discourage a plaintiff by the multitude of discovery. The lack of meaningful limits on depositions forces the less affluent litigant to cave in.

the deeper pocket prevails - dah!!

Justice is always served when parties settle in family law cases, unless one party just gives up due to cost. I rarely see that, however, because there is opportunity for awards of fees based on need and ability to pay as well as intransigence.

Sometimes yes. It depends on the case and the solvency of the parties

If the settlement is fair...

It depends. I suppose so, but I have never encountered anyone asking for discovery in bad faith, either.

Settlement saves the uncertainty of trial. A jury verdict could be for significantly more than the settlement, but a plaintiff may be willing to take less money in exchange for getting the money much sooner and fewer legal costs.

Sometimes. Depends on the case.

Purely cost benefit analysis that always allows the better funded litigant to get the results it wants because the individual cannot afford to compete. I never see justice done in litigation. I see results which my clients can swallow but that's it. The system is entirely gamed to benefit the big firms and corporate or wealthy defendants and the bench does almost nothing to try to alter that inequity, including a refusal to enforce the discovery rules or make any one pay for violating them.

A party that runs out of money accepts settlement out of desperation to stop the monetary bleeding. Justice is not proportionate to cost.

A settlement based on what was learned during discovery (good and bad) has at least the appearance of justice served. A settlement based on what discovery cost has the appearance of the party with the larger war chest dictating the outcome.

Just because one cannot afford to expend the funds needed to obtain the proper result is not indicative of justice being served.

I worry that it is not, but I am not 100% sure. I never am. Most of my clients can not afford to engage in extensive discovery. Who is gaining by extensive discovery? me or the client? how much will the discovery cost versus what is to be gained. I ALWAYS do a cost benefit analysis with my clients as we consider how to litigate and what to go after. For example, why spend a lot of money pursuing a back child support claim in a paternity case where it will NEVER be paid?

Folks look at their case and assess value and what it will take to get to and thru trial. Also if there is a lot of coverage then cost may be ignored by one party or the other.

Sometimes yes and sometimes no. Usually the party with the most money wins. Sometimes the party with the most money is not on the side of justice

Because of discovery costs, claims over 50,000 and (roughly) under 300,00 are prohibitive. Absent an arbitration agreement, the injured party is just stuck.

there should not be a link

Because then the parties get the best deal they can make.

The cost becomes leverage for a weak or unjust case.

Often clients get lost in litigation.

litigation is expensive and only those with money can do it realistically. lawyers are expensive and costs outrageous. there doesn't seem to be justice from lawyers overall about doing the right thing. it is how much can i get in fees and costs from this? people fold because of the emotional turmoil of non-reasonable litigants and attorneys who are unreasonable and difficult. you can zealously advocate while still being reasonable, ethical and moral and not a jerk.

Litigation becomes class warfare. The rich win because they can outspend the poor. Injustice results.

Public Corporations and government are not accountable to the costs, risks vs benefits analysis - not their money. The average JOE is unable to have equality in representation, equality in experts, etc., and force to settle due to costs.

Because at least in my practice area, consumers end up taking a lot less than the actual value of their claims because they can't compete with a defendant that has unlimited resources.

In a perfect world, the case value should be driven by the merits of the case, not the costs to be incurred to present or defend it.

Burying the less wealthy party with discovery abuse for no legitimate purpose other than fee churning does not serve justice.

I have had clients with very good cases decide to walk away or settle for much less than they felt they were entitled to "stop the bleeding" of costs and fees.

It cuts both ways. Justice is served if the parties reach a reasonable settlement with expenditure commensurate with the amount at stake. It is not served if a party is intimidated by discovery costs into paying a substantial sum on a case in which they have minimal exposure.

Justice is not necessarily served by an induced settlement. Even if a dispute settles, the outcome can still be unjust. It's perhaps just more palatable because potential losses are avoided.

it's like plea bargaining in a criminal case. whether "justice is served" depends on what really happened,

which is not often how cases are decided.

Often parties seek documents that do not assist in moving the case forward but instead just result in a lot of time spent by both sides reviewing documents and trying to find something useful.

Person with bigger pocket and pursue scorched earth to make less fortunate litigant cave.

Only if parties are equally situated

risk and cost should always be considered in evaluating cases and trying to resolve them; and it usually best to settle a case if it can be done in a reasonable manner; I would not settle for an unreasonable amount just to avoid discovery costs

Litigation is an ineffective way to resolve very complex issues.

Someone's financial ability to pay for such expenses should not be a barrier to the courts. This is an access to justice issue.

Settlement rarely serves justice anyway.

The party with the most resources can game the system. That is not justice.

Not necessarily, but yes, sometimes. It is unfair for a defendant to run up huge costs to force settlement -- but even worse, I believe such defenses are employed to discourage plaintiff lawyers from taking such cases in the future.

In many situations, one side has a greater litigation budget (including discovery) than the other side. As a result, parties often pay "ransom" settlement to end the litigation.

Discovery used as a weapon can too often impede justice by adding costs to litigation beyond what is reasonable.

Gets the parties to do that which they would otherwise be blinded towards.

Question 23

What are the most common discovery abuses that you have experienced?		
Answer Options	Response Percent	Response Count
Excessive/Burdensome Interrogatories	64.5%	269
Excessive/Burdensome Depositions	30.5%	127
Excessive/Burdensome Requests to Produce	51.3%	214
Excessive/Burdensome Requests for ESI Discovery	20.9%	87
Blanket Objections to Discovery Requests	72.7%	303
Failure to Make Deponents Available	14.6%	61
Failure to Produce Responsive Documents	67.6%	282
Failure to Preserve Responsive Documents	23.0%	96
Failure to Disclose Expert Witness Material	27.3%	114
Excessive Production of Documents	25.9%	108
Excessive Production of ESI Discovery	10.6%	44
Please list other examples of discovery abuse you have experienced.		113
	<i>answered question</i>	417
	<i>skipped question</i>	104

Please list other examples of discovery abuse you have experienced.

none

Although my practice does not involve a great deal of discovery, I have found that the rules of discovery have been well enforced by the courts.

Provision of effectively meaningless responses to interrogatories.

Lawyers who can not take a decent deposition.

Blanket and excessive objections, and withholding relevant documents are the most common.

Failure to candidly answer interrogatories and failure to produce material with the party's custody, possession or control.

Too many experts is the biggest problem.

Delay in producing for strategic reasons. Claiming that all emails between the parties during the relevant time period is too broad or the search "simply can't be done."

The wrongful withholding of discovery information (both 'rog answers and documents) is more problematic. Too many attorneys play games with their written discovery answers to evade their discovery obligations.

Failure to timely respond to discovery because of a gamble that you won't be willing to file a motion, and even if you do the judges won't sanction more than \$500 for failure to produce documents or answer interrogatories on a timely basis.

Requests to go through a persons home, garage, barn to find property that opposing client can't remember they had.

I received a set if interrogatories back that had no answers on it due to objections. I recently sent Interrogatories and rfp's to opposing and did not receive much of the documentation requested.

Production of repetitive and/or irrelevant or non-response material.

Judges who indulge any of the above.

The most common tactic is delay followed by marginal compliance.

Delaays in providing responses and documents

It's hard to prove, but in more than one case, it seems that failure to preserve responsive documents occurred.

We have primarily seen the abuse with excessive depositions required of parties not related to the litigation and document production requests.

Demanding response to interrogatories and production request while failing to respond to the same. Rarely should there ever be a reason to file motions to compel for discovery.

Not signing interrogatories properly, doing discovery but mixing up all the pages so unreadable, providing one sides of multiple bank account statements (i.e. p. 1, 3, 5), missing one or two statements that clearly will show where money went, blacking out document account numbers, doing supoenaes for same records and finding omissions, omitting how much paying into retirement accounts, moving money into another account and sending documents from current account and hiding those pages which show transfer, saying I can come and copy documents, and documents are just notebooks in random order, providing soiled or messy documents.

██████████
We have a huge problem in Grant County because we cannot even get a trial date until discovery is completed. In one case we are working on that involves a dispute of over \$20 million, we cannot get the other side to agree to allow us any depositions or answer other discovery requests reasonably. This has created a stalemate that ensures this case will last several years before we can even get a trial date. This is just one egregious example of discovery abuse, but the costs of litigation have become quite excessive in many cases.

Excessive motions to prevent IME's and to exclude qualified experts. Attempts to limit discovery by misapplication of the MAR's.

Vague and/or boilerplate requests for discovery.

failure of judges to enforce discovery rules

I think more and more defense attorneys use depositions to make money. Too many depositions scheduled and ridiculously long depositions with a lot of questions which do not need to be asked create good billing hours but do not further the cause of justice. Also, the "big firm" objections to written discovery make a mockery of our judicial system.

Blindset motions; seems that many civil defense attys have never heard of the common courtesy of

picking up the telephone and setting mutually agreeable time for a motion.

excessive lists of expert witnesses.

delays in scheduling of depositions

Willful misinterpretation of interrogatories.

Excessive public records act requests in addition to excessive RFP's

Reluctance by judges to effectively enforce production and reluctance to sanction Big Law and well-healed parties.

Expert witnesses - parties list experts they really haven't hired; and fail to produce info from the experts until the last minute.

A small number of attorneys will purposefully hide or destroy evidence

Depositions taking far too long.

Failures to request protective orders until motions to compel are filed (and judges allowing this).

Taking more than one deposition of my client

1) Excessive/unwarranted/inapplicable objections to interrogatories or requests for production.

2) Refusal to provide contact information for witnesses with knowledge (and simply providing "in care of" lawyer X, saying that witnesses can be contacted through counsel.) The AG's office seems to do this a lot.

Excessive demands to respond to contention interrogatories

excessive list of expert witnesses (workers comp cases)

fire cases: production of cubic yards of documents with no organization; instructing fire investigators to keep no notes so none can be discovered; treating all fire investigators as experts; inordinately expensive fees or other requirements (extra fee for video dep) for taking defense expert discovery depositions which must be paid by plaintiffs.

retaining experts for trial and then removing them at the last minute; changing defenses mid-stream or listing frivolous defenses without basis in fact

Hiding documents and contact information for witnesses.

Excessive motions practice; stonewalling on scheduling; unreasonable refusal to cooperate; requests for clearly privileged materials

Lack of cooperation on the part of defendants; routine use of inapplicable, boilerplate objections with no explanation of how they could even possibly apply in context.

Defense counsel lists 50 experts in discovery and expects you are going to depose all of them and then they choose who they like. This is particularly true in medical malpractice cases.

Intentionally redefining an interrogatory or request for production to circumvent a responsive answer or response.

Excessive requests for admission; excessive conditions for CR 35 examinations; excessive conditions for stipulations to obtain medical records.

CONFIRMATION BIAS. More a problem with Injured Workers than in med mal. Defense will amass 6 to 8 defense medical examiners through so-called "IME"s during the time when a worker believes the doctors/depts/employers want to help him -- before he has an attorney. The first 2 or 3 are the worst of the worst -- they have MQAC restrictions on their licenses, barring them from practicing medicine because they were such incompetent surgeons, but in the STID MQAC agrees that insurance medical exams are not "the practice of medicine" for the purpose of the restrictions. (Seriously. How is it NOT a RICO violation that [REDACTED] are on the dept's approved IME list)? So those incompetent, ass-spelunking, fuck-faced parasites are the first to render a report indicating that the patient is faking for secondary gain. (Even when a lay person can appreciate a dent in an exiting nerve root). By the time two or three of these are on the record -- before worker gets an attorney -- any subsequent DMEs will succumb to confirmatory bias. Then the department or SIE cherry-picks WHICH DMEs it will present. When the injured worker brings one IME to the table, dept and sie's argue that "preponderance" means the greater number of whores who are paid to say the same thing. And they

take every opportunity to remind the trier that the injured worker had "just as much right" to hire all the IMEs he wanted. Never mind "ability."

Attorneys know that judges do not like to referee discovery disputes and that the default judicial view is that "both sides must be at fault" if there is discovery abuse. This encourages discovery abuse since judges don't now the attorneys who are the real abusers, and the penalties for abuse are few.

CONTROLLING CORPORATE WITNESSES/EMPLOYEES

Defendants often try to take their responsive electronic records and produce them in unusable forms (e.g. paper) with massive undescribed omissions in order to make the data disclosed unusable or unsuitable for the purposes of discovery.

Non-responsive interrogatory answers or frivolous objections. Non-responsive and incomplete responses to document requests.

Non-r

Blanket objections of discovery requests and blanket denials on requests for admissions.

7 hour depositions of Plaintiff's doctors; contention interrogatories asking to lay out every fact and document on every claim in overlapping claims.

Naming multiple experts by the defense and then narrowing their list for trial purposes after seeing how they hold up in deposition.

Defendants frequently serve Designations of Possible Primary Witnesses with experts "to be named" who have opinions "to be disclosed." Judges rarely strike the later named experts, so lawyers keep doing the same old thing. It happens in a high percentage of cases. Either enforce the rules we've got or get rid of them, don't make more rules.

Instructions not to answer outside what the civil rule allows, consistent coaching of the witness

Refusal to answer RFAs is the most problematic. It allows defendants to deny things that should really not be contested, forcing plaintiffs to litigate things that should be no brainers, like an ER bill.

Discovery propounded because "that is what the insurers require us to do".

Objecting and responding "subject to objection" the reader is left without an understanding of what is being answered, particularly W/R/T production of documents. In seinfeldese - what is hidden behind the yada yada yada?

Hiding secondary insurance.

In our small world of medical malpractice, few of the regular lawyers for either plaintiff or defense do the things I have checked. But a couple of them do all of the above.

Interrogatories are typically useless because so many objections are interposed.

Failure to candidly and honestly answer questions.

Excessive requests for admission.

Requests for admission that are not proper.

Refusal to allow CR 35 exams.

Late discovery. Some attorneys will fail to produce documents and/or identify witnesses and then disclose the at the last minute and claim there is no prejudice.

Blatant misrepresentations to the Court about discovery issues.

Improper use of the 30(b)(6) deposition. Plaintiff's identify exceedingly overbroad topics (most of which are more properly asked to a fact witness) trying to set up the defendant for an improper designation argument/sanctions. It forces defendants to move for protective orders or risk sanctions. Either way, defense costs soar.

Failure to agree to release medical records which forces subpoenas and other discovery and /or motions to get relevant records. Refusal to agree to CR 35 exams which then requires motions

I rarely see what I perceive as actual discovery abuses. Some attorneys, typically those less experienced, tend to be less reasonable in discovery.

I would say this list pretty much covers it.

Failure to timely serve responses, with little to no consequences

See answer to No. 22

Needless hostility from opposing counsel.

Failure to completely respond to interrogatories.

Some attorneys resort to personal attacks couched as discovery motions in the hope of obtaining significant tactical advantage. They dramatically increase the cost of litigation and poison the spirit of collegiality that should prevail to help discovery run smoothly.

discovery on issues only marginally related to the case

Refusal to cooperate in crafting ESI search terms or collaborating on an ESI protocol. Requesting documents that are not necessary for the litigation but to create increased burden and pressure to settle. Depositions that are drawn out longer than needed to wear down a witness. Overly argumentative or objectionable dep questions that would never be allowed in a courtroom.

Meaningless expert disclosures that are so vague that they aren't worth the paper they are printed on. Incomplete copies of expert files.

Deposition subpoenas duces tecum to PARTIES, contrary to CR 30 & 45.

Often I receive vague and incomplete answers to interrogatories. Often the answers to other interrogatories in the same document will refer back to the earlier vague and incomplete answer.

Complete tolerance for late, incomplete, or very minimal responses.

Motions to compel

Failure to show up at depositions. Last minute cancellations with no reason stated.

lawyers who don't read the CRs

Opposing counsel failing to meet and confer, or refusing to meet and confer in a good faith effort to actually resolve the issue. Also, issuance of boilerplate interrogatories, requests for production, and/or subpoenas that have not been modified to address the case at hand.

Failure to produce accurate responses or fully disclose requested information, knowingly and in many cases by counsel. This is not a problem with the system per se, but the conduct of all too many colleagues and it is almost never sanctioned or even remarked upon by the Court. As with the artificial padding of time for bills, this is something that the Court has come to expect and accept.

Being ping ponged amongs defendants on scheduling. Insincerity and business practices that "ONLY" 1 atty in a large firm can handle a case or client when they have overscheduled - Justice Delayed is Justice Denied.

Plaintiffs generally provide a secretary's responses versus an attorney so then the process of setting up discovery conference and another extension of time to respond, which should have happened at the beginning.

None, other than what I already mentioned, in that some lawyers will send out interrogatories in cases that clearly do not need them. In fact, I always tell opposing counsel that if they want something from my client, just ask me. If my client won't produce it, then resort to interrogatories.

refusal to identify co-workers and other witnesses by name and phone number despite in re McGrath difficult opposing counsel

Providing evasive answers to interrogatories

Canned interrogatories in family law cases (asking many questions whose answers are obviously known and not controverted)

Late disclosure of witnesses/evidence right before trial.

I don't consider this discovery abuse, but sometimes I go against pro se litigants who flat out refuse to do anything.

failure to provided material timely

Refusal to answer interrogatories

Production of the other side's pleadings and multiple exact copies of the same documents over and over and then telling the court about the large number of documents produced.

Every cases seems to require a motion to compel these days.

Minimal answers to valid rogs or dumping a pile of documents that are totally disorganized has also happened to me.

obfuscated interrogatory responses and rules on expert disclosure with failure to really enforce; short notice on motions and settings for court hearings are a problem and abusive

Delay, failure to respond to discovery.

Fighting over modest extensions. Fighting over scheduling. Access to the property in construction cases. Improper expert disclosures.

If a party asks for a ton of discovery of documents or ESI, it really shouldn't complain if it gets it.

About 25 % of litigators are obnoxious and attempt to win by bullying tactics and misrepresenting facts to the court. Many judges do not want to take the time to learn the truth. These litigators are successful and clients seek out the "bull dogs". If judges would stop avoiding discovery disputes we could reduce these tactics.

Counsel going out of town for an extended period during discovery and not informing other side and not having anyone to accept discovery requests

Seeking a protective order for everything.

multiple motions just because; judges not giving/enforcing sanctions need to tell litigants to knock off the crap they are dishing out to make people fold/be difficult/run bills up, etc. just because a lawyer is \$400/hr doesn't make them a good lawyer.

Failure to timely identify expert witnesses.

Lack of organization and confusion by opposing counsel who lacks any financial ability to read, understand and organize financial statements, tax returns and bank statements

"Non-responsive" redactions within responsive documents, paragraphs, and even within sentences.

Issuing standard interrogatories that have nothing to do with the case. For example, in a case where my client was a victim of trespass by a contractor in a neighboring property, we were asked to produce our client's contract with the trespassing contractor.

inappropriate objections and coaching through "objections" at depositions along with instructions to the witness not to answer

Failure to educate 30(b)(6) designee; unfounded objections; failure to provide discoverable information or documents.

Question 24

What do you suggest should be done to reduce discovery abuse?	
Answer Options	Response Count
	255
<i>answered question</i>	255
<i>skipped question</i>	266

Response Text

Bigger Fines on Attorneys and Law Firms for abuse.

Financial penalties / sanctions for frivolous discovery requests, similar to filing frivolous lawsuits, and for failure to comply with rules of discovery.

set discovery calendar and send parties with disputes out into the hall to resolve them or face sanctions when dispute was silly - some fed judges do it and it works.

courts need to support the attorneys seeking sanctions and not give abusers the break they so often get in court, thus rewarding their bad behavior.

limit eis discovery; make requesting party pay for it

Discovery should be made more proportionate to the size of the dispute - somehow.

Limit ESI discovery. Provide a less costly and time-consuming process for resolution of discovery disputes.

I don't think more aggressive enforcement through sanctions by Superior Court judges is the way to go because many of those judges have little, if any, experience in the type of commercial litigation which generates the problems. Appointment of special masters which the parties have to pay for may work.

Limit discovery and limit the theories of recovery. A lawyer should know what law pertains to the case not throw a bunch of ideas against the wall to see which one sticks.

Assign dedicated discovery judges with a law and motion calendar where parties could be heard so disputes could be quickly resolved. I would also suggest the promulgation of e-discovery guidelines and more consistent rules throughout the state.

Sanctions

Limit # of Interrogatories and RFP's to 10 per party, including discrete subparts.

Hmmm, good question. Perhaps, a court mandated discovery supervisor, or a court mandated discovery schedule that is tailored to the nature of the claims, etc.

Require initial disclosures, have approved language for document requests and an easy forum to turn to for resolution of disputes, such as a court appointed referee.

The court should enforce the rules and not be so dismissive of discovery disputes.

Limit the number of experts.

Judges need to enforce the discovery rules. We have good rules but judges will not enforce them and rarely if ever impose sanctions. Sanctions need not be substantial. Even a couple hundred dollars will discourage further misconduct

Sanctions against non-producing parties and awards of full costs for motions to compel documents are successful.

The courts are too lax and fail to enforce the parties' discovery obligations. Without an effective deterrent, the abuses are more common.

Acknowledge that overly burdensome litigation overwhelmingly costs defendants more, and limit open ended fishing expeditions by plaintiffs

Like the criminal rules, I like the idea of a blanket set of information that must be passed

Rather than discourage lawyers from filing discovery motions, judge's should take an active role in managing cases early and rule promptly on discovery motions. Once the parties understand where is judge will draw the line on discovery issues, it is much easier for counsel to proceed.

Better oversight, probably by special masters.

I believe that the court needs to take a stronger stand. Right now the judges make it clear that they hate discovery disputes. Even when someone is wrongfully and willfully refusing to answer discovery, most judges will only award legal fees of about \$500, which is far less than it costs to prepare and file a motion to compel. Given that the court rule authorizes reimbursement of reasonable fees to file these motions, it is frustrating that the court feels that \$500 should cover it when it rarely does. This places the financial burden of enforcement on the victim's shoulders. Sanctions should be stiffer and the court should take discovery abuses more seriously.

Judges should be more willing to impose sanctions, including REALISTIC attorney's fees.

ponents should have to split the fee for recovering and processing the electronic records produced.

The cost of technology, software, and vendors is an additional discovery cost on top of attorney time to review the documents. The opposing party should have to share that technology expense, which would lead to more refined and relevant requests.

raise the cost of paper.

Either have the courts more accessible to deal with discovery issues or appoint independent persons or have an independent process to provide a means of enforcement of the existing rules.

Remind and/or teach attorneys and clients that disputes are "fairly" resolved, the sooner the focus is search for the truth, as opposed to "hide the ball." Cooperation between counsel to quickly resolve disputes, without litigation if at all possible, eliminates the need for a lot of discovery, and reduces the opportunities to be "tempted" to abuse the process

Sanctions should be more than a slap on the wrist and should be granted more often.

Require mediation in all cases at various stages (such as before discovery begins, after it completes, before trial). Require both sides to disclose all relevant information so litigation isn't a game of hide and seek. (Arizona has such a rule -- Arizona Rules of Civil Procedure 26.1.)

I like the idea of limiting the number of interrogatories and request for production that can be requested.

sanctions

Fee-shifting provisions by court rule and statute encourage both sides to consider costs/burdens of trial relative to the merits of their claims or defenses.

Reduce discovery. The process is inherently inefficient, i.e., a high cost for low returns.

Courts need to impose sanctions!!!

Create a discovery dispute resolution center empowered to sanction abuses. Allow bar association to sanction attorneys for abuses of discovery system

I don't know. It becomes a "cat and mouse" game for some attorneys.

Having a standard protective order for confidential information might help problems with producing confidential personal and financial materials

adopt a higher standard than minimal relevance. Make a party pay fees if discovery turns out to be a bust.

Enforce the rules.

If lawyers charged reasonable hourly rates, and did not abuse the process by using the discovery process as a hammer against the opponent, your survey would be unnecessary. The best approach may be to require mandatory discovery conferences with a judge or commissioner. If the parties can agree on a discovery schedule with limitations on each of the discovery tools, they could submit an agreed schedule and avoid the conference. If they can agree, there is no problem. If they cannot agree, the judge or commissioner can impose the limitations. But, the overall cost of civil litigation is driven by the hourly rates charged by lawyers and the time they report.

Enforce the actual rules. Again, I think the judiciary needs to buck up and lead.

Stronger rulings from the courts, following the discovery rules and enforcing non-compliance with meaningful remedies and short deadlines

Set limits and establish a sanction schedule by rule

Enforcement of existing rules with sanctions for abuse.

The overly-long deposition needs to stop. Also, parties should be required to provide 5 dates on which their experts are available to be deposed and those dates offered should fall at least two weeks prior to the discovery cut off. Also, consider setting discovery cut off 2 months prior to trial, I like this in the federal system, it closes the dispute early and allows the parties to a) work on resolving the case; b) prepare for trial.

Application of sanctions that directly affect the ability to put on evidence at trial.

enforce existing rules

A discovery conference in each case (with or without judges) wherein parties can discuss what is there (especially ESI) who the custodians are, etc.

Impose limits on discovery that may be extended for good cause by leave of court.

Disallow contingency fee arrangements so that plaintiff attorneys have to weigh the actual cost of discovery requested against the merits of the case. Also, many lower court judges have a fear of being overturned and err on the side of granting abusive discovery requests.

Award atty fees if motion to compel is granted - automatically. Fees to cover cost of letter and phone call as well as the hearing to address the issue. Fees should be awarded if the motion was ridiculous also. (The abuse goes both ways sometimes).

The bench needs to sanction parties higher sums of money; i.e. full attorney fees of other party including the time it took to do fee affidavit, and tack on extra \$1,000 to cover copying, service fees etc. Until this is done, parties in divorce will continue to get away with hiding money from other spouse

Require the proponent of ESI requests ask the court for permission and have the court determine up front who bears the costs. Judge's should have access to specialized commissioner or panel who can joint the trial judge and participate in the motions to compel/protective order hearings. Trial judges (and many attorneys) do not understand the costs and ramifications of ESI requests, thus, cannot effectively rule on the issues. The judge plus the specially trained commissioner/panel could then rule *together* about the ESI and discovery process.

Judges must enforce the discovery rules. That is the most important. It would also be helpful if we had a mandatory timeline like in federal court for discovery and the trial process.

I think something related to preserving records is important, especially, for businesses.

Reduce availability of sanctions. Consider statewide interrogatory/depo limits.

Strongly sanction attorneys/parties who don't comply

Educate the bench about the Civil Rules.

Enforce the rules, such as exclusion of experts not properly or timely disclosed. The case law saying that the court may exclude witnesses only upon a showing that no lesser sanction will suffice is an exception that swallows the rule, so the rule never gets enforced.

Ensuring that judges actually impose fees and costs on the losing party to a discovery dispute. Many times judges do not impose fees and costs as required by CR 37.

Judges should be tougher on absurd objections to ESI requests, parties need to discuss what kinds of ESI they have earlier, and parties should be sanctioned for refusing to produce data and info that is clearly discoverable.

Enforcing the rules.

Appoint a special master or someone similar (retired judge/mediator, &c.) to oversee/guide discovery?

Judges need to rule on motions rather than letting them sit.

universal enforcement and sanctions by the judges

judges need to enforce the rules. And lay down discovery as in federal court would be helpful in superior court.

Courts should be more willing to sanction misconduct.

Consensus statements from the court re what is expected in discovery would help. Guidelines regarding use of blanket objections or "we will produce" but they never do and it is difficult to keep track of what has been provided and what has not been provided. An easier way to deal with discovery issues other than filing motions with the court eg retired attorney or "discovery master" assigned to case who is easily accessible to handle issues over the phone.

Suggested reforms at the beginning of Survey might help. Financial sanctions against the most egregious

abuser.

In a major case the defendant's discovery obligation is as strong as the judge sitting on the case. Many of the large corporate defendants know this all too well and test the judge (and plaintiffs counsel) before giving actual responses in discovery. Everyone knows that Judges hate discovery disputes. To the extent that a defendant can make a discovery dispute look like a bickering match and get the judge to overlook their obligations, they know they can avoid their obligations. Some of the large manufacturers have become expert in this area. Discovery is important and Judges need to enforce discovery obligations. The system does not work if judges don't do so. The King County method of having discovery disputes submitted on pleadings works well because judges are often loathe to look and attorney in the face and sanction him or her if their client is not meeting their discovery obligations. (I could go on this topic for awhile, but we need judges who understand the discovery rules and enforce

them. The statement that judges hate discovery disputes should not mean that judges abdicate their role and responsibility in this area.)

Stricter court rules, cle on discovery ethics

Limiting rogs and RFAs, as is done in King County, is a start.

Impose monetary sanctions for breaking discovery rules

Sanctions. Use of form interrogatories. Mandatory disclosure at the start of a Family Law matter (a la California)

Attorneys become very busy, and then will give you things late, without much time to continue your discovery, but then they try to ask for CR 37 sanctions. This has been seen by me as a strange tactic, that they are technically compliant with the litigation schedule but leave you no time or do their requests at the last minute and then try to get sanctions. I would like to see more civility personally. I do like CR 26(i) conferences, and I believe that this has helped, however, I have seen this abused. One example was when an attorney called and said, "This is a cr 26(i) conference, we never got a report from your expert." and it was sent over within thirty minutes, because it was an inadvertent mistake. This was still before the discovery deadline, but then they turned around and asked for sanctions a couple of days later when the deadline passed.

More needs to be invested in courts so judges have the resources they need to enforce rules, sanctions should be used more liberally. Standardize e-discovery and shift burden to telecoms providers -- they are already producing information at the whim of the NSA - why can't telecoms/FB/google etc be compelled to produce a "standard" info packet?

Terms imposed on Blanket Objections to Discovery Requests. Typical defense tactic.

limit discovery

Stricter enforcement of discovery rules might encourage motions to compel, etc that increase adherence to spirit and intent of the discovery rules.

Stop fishing expeditions. IN personal injury cases in particular, allowing defendants to get more than 3 years of medical records prior to the injury -is just a fishing expedition that costs the plaintiff hundreds of dollars. If the medical records from 3 years before the injury show a related active pre-existing condition that should be sufficient to allow the defense to argue the current injury was exacerbated or simply not even a new injury. 3 years should be the cut-off More is harrassment, fishing and drives up the cost of litigation.

mandatory discovery deadlines in every case

Appointed discovery masters, sanctions and winner's attorney's fees get paid in discovery disputes.

Have a limit on such things, which can only be exceeded by agreement or Court Order

Deny relief to discovery abusers by dismissing claims or entering default judgment to the other party.

Shouldn't be allowed to list an expert witness you haven't retained. Except for treating physicians, parties should be required to provide detailed reports from their retained experts. Plaintiff first - within a reasonable time after suit filed. Then, reasonable time for defendant to respond with experts/reports.

Also, there needs to be a limit on what experts (and especially doctors) can charge for their testimony. Although there's a rule that allows a party to file a motion, that's time consuming and expensive. There should be a formula for an expert fee - and the expert should have to petition the court for more.

blanket objections should result in sanctions

Have the trial judge warn then fine, and I mean big time fines, attorneys who abuse the system.

It is really upsetting to provide a judge with undisputed proof counsel is acting in bad faith and the judge then do nothing about it.

Enforce discovery abuses with harsher sanctions. Limit depositions to 4 hours unless leave from the court is granted. Lawyers like to hear themselves talk.

Judges would have to have more time to sort through who is actually to blame. Now they finger wag at both parties, or, worse, get all random in raging at one party.

Allow judges the ability to enforce discovery abuses with real consequences to parties who engage in such abuse. Make the penalties for abuse hurt to deter future bad conduct.

The courts need to sanction the attorneys and parties that engage in this behavior. If a valid motion to compel has been brought, sanctions must be awarded, including attorney fees for the time in bringing the motion. Enforcement is truly the problem. Once judges realize that a party has brought forward a motion to compel, the problem is serious and should react accordingly. Maybe even revising the court rules mandating sanctions is necessary so judges feel more comfortable with sanctioning the bad behavior.

Judges need to be willing to sanctions parties and/or attorneys for wilfull obstruction!

Sanctions. Fees that actually represent the costs incurred, rather than a small percentage of them, when they are awarded.

Judges must be proactive in penalizing abusers

A clear rule providing that objections are only to be made if information or materials are being withheld, and that no objections are waived by not being made.

routinely sanction parties who make stupid objections. Courts are reluctant to wade into disputes between parties, hoping that it can just be "worked out." (although that's their job). As a result, there is no cost to defendants for failing to respond properly and litigating. Few courts will impose meaningful sanctions for abuse. Defense attorneys on hourly rates profit, their clients hide information, and plaintiffs suffer.

Better judicial sanctions for discovery abuse.

Enforce the existing rules

Develop when possible uniform written discovery

drafting/creating a more expansive list of "recoverable costs" for Plaintiff's when the verdict is in favor of the Plaintiff (i.e. sometimes the cost of the win is more than the win but the defense bears none of that risk)

Stiffer sanctions on lawyers.

Harsher sanctions for true discovery abuse; award more actual costs and fees for frivolous motions

The courts should enforce the discovery rules and insist that defendant's provide the discovery sought.

1) Depositions of parties are allowed.

2) No depositions of experts except by stipulation or court approval;

3) Experts are bound by counsel's interrogatory disclosures.

Court ordered sanctions.

Re-do the civil rules to eliminate these tactics.

In worker's comp -- for every IME selected by the defense, the dept or sie must pay all reasonable fees (at the time they are due) for one IME selected by the claimant. Dept or sie must pay for claimant's expert witness fees if a Board alj at the point of mediation determines that the injured worker has a reasonable chance of success. Claimant recovers costs and fees if he is successful at the Board level. Claimant has the right, at dept's or sie's expense, to present any or all IMEs he attended relating to the claim. Lay witnesses are paid a realistic hourly fee plus travel expenses for depositions, just as expert witnesses, and have an absolute right to have the deposition continued when it exceeds the scheduled time. Legislative -- whenever litigation at the Board level or beyond reaches one year or 1/5th of the worker's annual wages, then at any time thereafter the worker has the option to waive coverage under the act and to sue the employer directly in Superior Court under any and all other theories -- including malicious prosecution at the administrative levels. GET RID OF THE IMMUNITY afforded expert witnesses, or at least create a fourth cause under 7.70 providing med mal recovery for gross negligence against providers who testify deceptively or misleadingly.

MOre streamlined and pattern discovery requests for each particular type of case and opting for lot of e-service and rules favoring discovery disputes to be handled by one neutral party so that motions need not be filed.

The single biggest mistake, in my opinion, was going to hearing motions on the paperwork. This has resulted in some crazy rulings causing huge efforts to correct. When judges heard oral argument I used to go years without a "crazy" ruling. Judges work hard and it is too much to expect them to get things right based solely on paperwork. I believe judges should hear argument on motions. That was how judges got to know attorneys and they knew how to deal with attorneys who abused the system. If not hear argument on all motions at least grant argument if requested by either party. If not that then dedicate judge(s) or commissioner(s) to hear motions. If not that then have attorneys hear the motions with a right of appeal to a judge who actually hears the argument.

ALLOW MORE RECOVERABLE LITIGATION COSTS LIKE ID AND CA. MORE CASES SETTLE SOONER. I KNOW FIRSTHAND.

Clarify Rule 34 to require parties to disclose electronic records in a reasonably usable electronic form, with deletions of irrelevant data explained and deletions of data needed to interpret the data prohibited.

A judge (or a discovery master) needs to pay attention to discovery issues. it needs to be the same person for the duration of the case. Now, judges hate discovery disputes and add to the problem of abuse of discovery because they do not want to give the issue the time that it needs and deserves.

stronger, more easily obtainable sanctions for mis-answers to requests for admissions

Enforce the existing rules. Judges are prone to cut too much slack when parties drag their heels or otherwise fail to cooperate in legitimate discovery.

If we are going to have rules regarding discovery, then they need to be enforced - consistently.

Stiffer penalties, and better adherence to the rules by judges.

Stop giving a pass to Defendants on making indigent plaintiff's repeatedly demand and force and move to compel to get documents; stop harassment of medical witnesses by Defense taking 4-7 hour depositions of treating doctors, making medical professionals refuse to treat and cooperate in litigation.

Do not allow IME's by physicians who earn more than 20% of their income from doing forensic examinations.

Have live hearings of legitimate discovery motions to compel. If judges are too busy, appoint special masters. No hearings means no compliance with the rules.

Strong sanctions

Better adherence to the State and Local Rules in place.

More enforcement of the discovery rules with severe sanctions.

Have an initial disclosure requirement as in federal court

Judges should use common sense and rein in ridiculous discovery abuse.

Enforce the sanctions rules.

Courts don't enforce RFAs nor do they enforce the cost provision. If they did, it would incentivize the defense to admit issues that should be admitted.

Also, too many times judges get weak kneed on discovery sanctions, even when the discovery abuse is patent.

The major thing is reforming the request for admissions rule. If an issue is not really going to be at issue the party should have to admit it once discovery is complete or face penalties greater than the cost of proving the matter at issue.

Judges need to get tougher and hit parties harder with sanctions if there is misbehavior

The Superior Courts should be more aggressive in sanctioning parties, especially sophisticated litigators such as insurance companies, that make frivolous objections and force parties to file motions to compel.

I think leaning towards a "shall or should" rather than "may" issue sanctions regime is a good idea.

Further the sanctions should be joint and several with the atty's who sign off on the BS objections.

sanctions

Enforce the civil rules that exist

reduce time limits on depositions for cases less than \$100,000 to 2 hours

Discovery Conference with court at the beginning. Set reasonable schedules and limits, based upon the input of the lawyers. (Learn which lawyers not to trust for spit. And remember that we are here to serve the litigants, not the lawyers or the court) Enforce the schedules and limits unless good cause is shown.

The Board of Industrial Insurance Appeals needs to do a better job of monitoring discovery and disciplining non-compliance.

Disbar certain lawyers but it will never happen as they are a part of the power structure

The suggestions set out in this survey before seem to be great places to start.

Courts have to award sanctions as the games will not stop until attorneys know they will be held financially accountable in my opinion. There are too many repeat and known offenders.

I think it's a culture among some law firms. So education, enforcement and penalties might help contain the problem.

Laydown disclosures such as in federal court would be a good start, with similar consequences for failing to comply in good faith.

Discovery abuse is practiced by various attorneys because it works, and the risk of penalty is almost non-existent.

Limit total amount of discovery that can be done so that parties must prioritize and do most important discovery first. These discovery results should drive settlement/resolution on the merits. Parties would be able to seek judicial permission for additional discovery if it is really necessary. However, judges would have to require some significant showing of need for additional discovery. For abuses, sanctions against attorneys should be high.

In some contexts, staggering expert discovery with mediation is useful. In construction litigation, I like to have construction experts produce reports and then mediate. If mediation fails, non-construction expert reports (such as appraisals) are then due. In other words: identify the most key experts, produce reports, depose, then mediate, and hold off production of "secondary" experts.

Limits on Rogs and RFP

Judicial enforcement of the discovery rules & proactive involvement to limit discovery abuses.

Excessive requests for admission: limit the number, including subparts.

Requests for admission that are not proper: have a rule making it clearer what is and is not proper.

Refusal to allow CR 35 exams: make the examination a matter of right if requested unless a protective order is obtained.

Revise the ESI rules. ESI should be limited in smaller claims, and when it is permitted, the requests should be required to be very precise and within a reasonable time frame. Permit production of paper documents, when sufficient paper documents are available, and require cost sharing by the party seeking ESI if the documents would otherwise be available for production at lower cost.

Tough, mandatory and real sanctions.

Eliminate interrogatories.

Limit requests for production to 25 (more with leave).

Limit depositions like King County SC does. Limit Rule 30(b)(6) depositions to no more than 10 subjects (with no subparts permitted).

Limit ESI to cases where economic damages exceed \$250,000.

Cap plaintiff's attorney fees recoverable for discovery conduct (\$25-40K).

Judges get engaged; judges hold lawyers accountable; judges pay attention; and judges follow court rules. Lawyers will follow the judge's lead. When judges are disengaged, the bad lawyer wins every

time.

Have the courts actually enforce the rules when motions are made. I see that courts bend over backwards for plaintiffs but hammer defendants for even same lapses. It is uneven and unfair. Plaintiff attorneys know this and take advantage of it.

see prior comments and responses

Better manage (place limitations on) the scope of ESI that must be reviewed/produced at the onset of a case. Currently, the number of emails and electronically stored documents to be reviewed slows down the progression of a case and results in significant attorneys' fees.

More rules in local jurisdictions limiting discovery, and courts' willingness to enforce those rules. King County seems to be one of the few jurisdictions that have and enforce discovery limits, but even those could be tougher.

Continue practice under the existing court rules for discovery.

Judges need to be more decisive about discovery and about ruling on the merits. Too many judges are too timid.

I like the idea of volunteer lawyers who would act as arbiters of discovery disputes, and procedures that would enable disputes to be resolved by them quickly and efficiently.

Again, the judges/courts need to enforce the discovery rules better and not allow the crazy and excessive discovery often sought needlessly in a case which does not require it

Motions to compel should be upheld WITH FEES

Not sure, but I don't think abuse is the problem. It is the attitude that we have to uncover everything.

Have the courts limit discovery costs by requiring discovery budgets that the court must approve.

Consequences for evasive and untimely discovery practices

Judges need to manage cases better, including enforcing state and local discovery rules.

Encourage the use of stipulations. Actually award sanctions when one side abuses the process rather than letting each side bear their own costs.

Enforcement of the existing rules.

Structure the discovery rules to force the litigators to be more focused in their discovery.

Convince lawyers that, ethically, they are bound to make all relevant information available, rather than to play games.

Having judges willing to supervise discovery closely and punish offenders severely.

Judges need to discourage abusive discovery and frivolous motions that are clearly generated to obtain a tactical advantage rather than to address a legitimate discovery problem.

Sanctions, Sanctions, Sanctions

The rule should be that when you go before the court on a discovery dispute, the loser is going to be sanctioned

Rules limiting the number of rogs, depositions, RFPs with leave to request more.

Early and active involvement by the bench in discovery disputes. Many judges don't want to dirty their hands with discovery but that enables the abuse to continue because neither side expects to seek court intervention. Also judges who do not have a background in complex civil litigation should try to educate themselves about the practical realities of discovery, especially ESI. It is sometimes hard to understand what the challenges are, if you have never had to run a search and production yourself.

Judges should enforce the rules when not followed by counsel

Limit the number of rogs, rfp, rfas and depositions. Shorter time between filing and trial. Mandatory mediation.

have judges hand down discovery sanctions once in a while.

Order sanctions where the process is abused.

See previous suggestions. IMHO, discovery "abuse" occurs rarely, is usually obvious, and can be contained/counteracted. Usually, it is a matter of opposing counsel taking an untenable position

regarding the existence of discoverable items, which position can be rapidly undermined through a deposition of the party's records custodian. Once the facts regarding the existence (or non-existence) of discoverable material are obtained directly from the opposing party (as opposed to its attorney), discovery disputes usually lessen, which is why an early deposition of a party's records custodian can usually eliminate pointless objections and arguing.

Discovery masters

Stricter CR 11 enforcement.

The existing sanctions under CR 37 are adequate.

Judges need to be educated about the costs they are imposing, and the rules clarified to demand a true weighing of the costs and benefits.

The courts should be more willing to impose stiff sanctions for clear abuses, including entry of default against defendants and dismissal with prejudice against plaintiffs.

Judges who are willing to enforce discovery court rules.

Judicial willingness to enforce (daily monetary penalties are quite effective)

Strictly enforce the existing rules.

Curtail ESI and apportion costs so that plaintiff has to pay something. Appoint ESI magistrates that understand ESI and can quickly help dig through to the ESI that is actually relevant.

Implement some of the ideas in this survey

Limiting the number of depositions of witnesses based upon the type of witness would be a start, e.g. a certain # for lay witnesses versus a certain # for experts/treating physicians. Forcing parties to commit to who their testifying experts will be so we aren't stuck deposing both experts they ultimately won't call and those they will.

Move the burden onto the party refusing discovery to file a motion (after conferring) for a protective order and make sanctions mandatory if the court grants more than 50% of the motion.

Limit discovery without judicial approval/permission and measure discovery limits by the amounts in issue and/or the complications with respect to the legal issues or facts in question. Have greater judicial management of discovery and have more timely trial settings.

Have courts or other entities more willing to enforce against abuses rather than having the parties settle things on their own. Often, it's only one party who is the offender in this regard.

sanctions

uniform enforcement of the rules by Judges

Easier access to court for remedy

Increase the number of days for response to document requests from 30 to 90 days, to allow enough time for meaningful collection, review, and production of documents/ESI. (Many discovery disputes and related motions arise solely from common, unavoidable timing issues.)

Harsher penalties by the court on motions to compel.

Have more informal Judicial discovery conferences before the necessity to note motions to compel or for sanctions - enforce the current discovery rules

Limit the number and scope of interrogatories, requests for production and requests for admission.

Limit the number and duration of depositions.

Hold the attorneys personally responsible if they are not handling discovery reasonably.

Lay down discovery. Start really enforcing CR 37. Have a special master decide all discovery disputes, and have them be done strictly via conference call - no written motions.

Courts should be directed to take stronger stand against abuses when Plaintiff gives inappropriate answers, such as I didn't have time due to my case load, why not set up responses due date AND sanctions that will be imposed if plaintiff misses the Court set deadline. It is getting to be a joke with the excuses that Judges will accept.

Standardize written discovery; limit all discovery (number of depositions, etc.); adopt early disclosure rules used by the Federal Courts, requiring every litigant to disclose all material documents and names of witnesses within 60 days of filing suit/being served. Then have all parties appear for some form of

early ADR (the mediators can be appointed like MAR arbitrators), absent leave granted by the court. The appointed mediator can then file a sealed report with the court indicating the last position of each party, and that will form the basis for determining who is the prevailing party at the end of the case.

disbar unethical attorneys

Failure to disclose equals an automatic fine of no less than 1000\$ of which the judge pockets half.

Lawyers need to be problem solvers first, and litigators second.

Serious sanctions for obstructionist conduct. Judges are too lenient.

Despite the near universal reluctance to do so, the court needs to provide relief from abusive discovery. The court should more frequently require discovery plans tailored to the case.

Impose real terms for foot dragging. After five phone calls and two letters, when the motion is drafted, that's when we get what should have been produced without objection in the first place. The courts should look at the entire history and award terms for delay

Sanctions following motions to compel, or other appropriate motions.

greater control by the courts and greater penalties for non-compliance

Having a neutral/objective person decide a dispute without having to file a motion; better education of attorneys; perhaps a beefed-up ethical rule stating that certain forms of discovery abuse are unethical

Make lay down discovery mandatory.

Practitioners in each practice should develop more streamlined rules. Personal injury and family law, for example, are not conducive to the same types of discovery.

Give the discovery rules more teeth. Judges need to be willing to not just enforce the rules, but sanction lawyers/parties who do not follow the rules.

Unknown

Limit the number of interrogatories

Put limits on depositions and limit the range of question to relevancy

Sanctions sanctions sanctions.

Enforce the rules and make parties that refuse to follow the rules PAY for the refusal and the costs of having to move to compel. The requirement to get a protective order first is a joke. No one does it and then judges refuse to award the costs of a motion.

The parties should stipulate to a discovery plan and identify documents in their possession and control, like in the Federal Court system.

discovery conferences with the court and pre-trial schedule with cut off dates that stick.

Trial judges need to impose the actual costs of obtaining compliance on the abusing party.

A greater focus on training. Many lawyers--not just new lawyers, but also experienced ones--seem to use discovery in lieu of investigation. Discovery abuses and costs would be greatly reduced if lawyers were taught and encouraged to (a) gather evidence without engaging in formal discovery and (b) use discovery to fill in gaps left by the informal investigation. I don't believe the answer is more restrictions. I believe the answer lies in changing the culture and habits among lawyers as it relates to discovery.

Limit requests for production, sanctions for failure to justify scope of discovery.

Sanctions and terms, striking pleadings.

Judge's should consistently enforce the discovery rules as written.

Impose greater sanctions on abusers whether they are counsel or a pro se litigant; provide cost awards to assist parties who are at a severe financial disadvantage - especially when children's issues are at stake.

In more complex cases where there are significant issues to resolve, maybe a settlement conference where the parties identify what are the issues separating them and what sort of proof is needed to establish the facts objectively.

there is an element of the courts not having patience for discovery disputes thus allowing abuse. the federal judges are more amenable to phone calls to discuss issues when they crop up and are fairer. there does not seem to be as much hometown flavor to rulings

Enforce the rules more strictly, including assessing sanctions. In my county, luckily, we do not have a significant discovery problem.

Enforce deadlines and impose consequences for failing to meet discovery deadlines. Requiring plaintiffs to produce expert opinions, theories of the case early on. Limiting broad discovery, rfps, to large entities.

Increase the dollar amount of mandatory arbitration; perhaps develop a sliding scale of discovery dependent on the value of the claim. (Subject to judicial authority to increase.)

Limit or disallow lawyer fees associated with drafting and issuance of discovery (at least in cases under \$X of monetary value, with exceptions)

Judges need to be more involved and pay attention to discovery abuses. Judges with no civil background have a hard time understanding their context.

Mandatory initial disclosures in every case! Harsh sanctions for failure to make initial disclosures! Have a status conference early in the case to review compliance with initial disclosure requirements, set the tone for further discovery abuse.

Sanction attorneys

More monetary sanctions by the trial courts and disallowing redundant witnesses.

Model our system after Oregon's.

Place reasonable limitations on discovery and have the courts enforce them. Impose sanctions when parties abuse the process.

Limit it as earlier suggested in this survey, subject to court orders permitting additional discovery on a showing of need.

Require family law attorneys to have some background or more training in accounting and tax. Require family law attorneys to take specific CLEs in these subject areas.

The court should issue orders re: discovery more frequently and make them more readily available.

Prohibit "non-responsive" redactions within responsive documents and allow redaction within responsive documents only for privilege.

I like Oregon procedure

Harsher sanctions, less discretion whether or not to impose sanctions.

I like the idea of retired attorneys and judges overseeing the discovery process. That takes the burden off of the sitting judges who don't need to be overseeing folks throwing sand at each other. There should also be some obligatory exchanges (like federal court). Parties should be obligated to exchange every document they intend on presenting at trial as a rule--opposing counsel should not be burdened with repeatedly asking for it. Further, any settlement with any party should be immediately disclosed (There are recent cases on this from Division One and the WSSC that don't require it--wrong from a practical point of view).

It would help if courts would enforce the rules and do something when abuse occurs; because many courts do nothing, bad actors continue their bad and abusive practices

Courts don't give serious attention to discovery disputes. Appointing a special master at the outset to address discovery issues may be helpful.

Much much much more capable judges on the bench, but then that is dreaming isn't it?

make recovery of attorney fees or sanctions available if objections to any of the above are found to be valid

Limit discovery in small dollar cases.

Promote more uniformity in the interpretation and application of the rules, and enforce real sanctions for abuse.

Increased sanctions for both parties and attorneys when civil rules are not followed.

Perhaps implement mandatory disclosures on all cases of specified information

Judicial oversight and willingness to sanction offending attorneys.

If judges are proactive-- rule on motions quickly -- make clear they will not put up with discovery abuses -- these will occur less frequently.

Eliminate interrogatories. Develop pattern requests that cannot be objected to.

Question 25

What do you believe are the primary forces driving litigation costs?		
Answer Options	Response Percent	Response Count
Higher monetary stakes in underlying litigation	26.9%	110
Longer litigation tracks (from filing to disposition)	29.1%	119
Broad discovery requests	43.5%	178
ESI discovery requests	17.1%	70
Disputes over ESI discovery	11.5%	47
Greater case complexity	24.2%	99
Summary judgment practice	12.7%	52
Expert witness fees	43.5%	178
Unequal bargaining positions of the parties	42.8%	175
Representation by larger firms	45.0%	184
Number and types of depositions (deposition costs)	29.8%	122
Attorney fees	54.0%	221
Reports, studies, analyses or other projects ordered by the court	5.9%	24
Court fees, copy fees, printing fees, etc.	13.0%	53
Legal research services	6.4%	26
Consultant or specialist fees	21.3%	87
Paralegal or secretarial fees	2.9%	12
Private investigator or investigation costs	4.2%	17
Obtaining medical, government, or other records	22.2%	91
Please list other factors that drive up the cost of litigation.		116
	<i>answered question</i>	409
	<i>skipped question</i>	112

Please list other factors that drive up the cost of litigation.

none

If you can't dazzle them with your footwork, baffle them with your bullshit!

Ethical standards and malpractice issues force attorneys to "go the extra mile" to make sure there is no exposure to the WSBA or professional liability.

Litigious attorneys

#1 answer I get is legal malpractice. If every stone isn't turned over I may be liable for the loss. Similar to Med Mal cases where the simple test wasn't given or the 1/2 hour worth of forms were not filled out.

The failure of Washington courts and judges to resolve matters and drive towards a short trial schedule. There are too few judges to get regularly assigned trial dates and those dates tend to move in favor of criminal cases.

Continued quantitative easing by the Fed making everything more expensive in real terms.

the lack of an effective rule that would allow the court to consider offers of settlement in ruling on requests for fees in family law cases.

Absence of a basis for awarding attorney fees to prevailing party

Parties and the courts are often unwilling to discuss settlement seriously until "all discovery is completed." Generally, the parties can discuss settlement after the depositions of the parties and maybe an

expert or two from each side if they are willing to explore settlement in good faith.

Although it may sound counterintuitive, the embrace of mediation in the past 20 years has eroded the skill of newer lawyers to settle cases on their own. Good reasonable attorneys with their clients' interests at heart don't wait until late in the process to engage in formal mediation before discussing settlement. I've mediated scores of cases and am a fan in the right case but regret that there is a huge percentage of cases that the lawyers should be able to settle themselves. Formal mediation is an expensive process, too.

The lack of trial experience also increases litigation costs. Lawyers who have not (or rarely) go to trial aren't as skilled at preparing a case (during discovery) or focus on the issues. Depositions are more unfocused and rambling, insignificant discovery disputes arise, and there's more wasteful motions practice. Sorry I don't have a cure for this factor, but I do think it's part of the problem.

Not requiring mediation until the end of a lengthy case schedule absolutely increases the cost of litigation. There is no reason why cases couldn't settle earlier. Also, attorney behavior can hugely impact the cost of litigation, positively or negatively.

Transportation cost -- people are traveling all over the state (and sometimes all over the country) for low \$ cases. That's ridiculous. Let witnesses, parties, experts, whoever appear via skype or a similar service.

Technological illiteracy -- there are A LOT of attorneys who spend excessive time (hours and hours) doing something on the computer that takes 2 seconds if you know what you're doing.

Attorney attitudes of "leaving no stone unturned" or "scorched earth policy" as a result of becoming emotionally involved in the client's cause against the opposing side - with a determination to "win" no matter the costs.

The insurance industry, every aspect of it, is the primary force driving litigation costs upward in every aspect of our society, business, health, medical care, bonding, etc. The "compensated risk bearer" won't bear the risk without first trying to out spend the claimants/insureds.

No opinion.

Discovery costs are the largest single factor in the cost of litigation. The equation is very simple: More discovery equals inefficiency plus higher costs.

Insurance companies reliance on low jury verdicts and taking advantage of long delay in getting civil cases to trial.

There was an excellent article in the bar news about the "forensic" approach to law. The fear of your client or another attorney later claiming you should have done this too.

Parties' unrealistic expectations despite the attorneys efforts to control the clients. It is affected by TV and movies - they expect "justice" somehow.

Insurance companies with in house counsel.

attorney fees are higher because of the higher costs of running a law office. in family law, personality disorders, lack of understanding of the limits of the legal system, and emotions also tend to increase litigation costs.

Fear of malpractice and/or RPC violations for failure to be thorough ("competent" or "diligent")

Attorney fees are also arbitrarily high because the costs of legal ed have gone up so high. Solos/small firms have to charge enough to make enough to pay student loan bills.

Materiality and broader implications of the issue being litigated

Attorneys are conducting litigation for their own compensation. Attorneys use tactics that are unethical and not consistent with their fiduciary duty. The attorney ethics are written vaguely and enforced rarely (with punishments being ineffective). The rot in the litigation system is driven by the self interest of attorneys seeking out 'claims' that the attorney can leverage for their own compensation under a contingency fee basis. The profession needs to have honor restored to it. It should be a profession, not a poker game played at society's expense.

I think they are unscrupulous attorneys who have no compunction about hiding assets, money from opposing party and feel no guilt about this. How they sleep at night I don't know.

More issues should be resolved at SJ.

Animosity and unreasonableness of the parties to the litigation. As well as the habit of some attorney to use cookie cutter discovery requests to save time and money that are not appropriate to the case.

Defense firms are incentivized to draw out discovery disputes, charging their clients by the hour.

The unwillingness of attorneys to counsel their clients to resolve bad cases. Churning hours on a case, knowing that should and likely will eventually settle, is bad for everyone but the attorneys.

One of the primary forces is for sure expert fees. They are getting higher and higher. Some kind of restriction on hourly rates would be helpful but this may limit the number of individuals willing to serve as experts. Also limitations on number of experts would be helpful. Plaintiffs are at a huge disadvantage when it comes to hiring experts and taking depositions of defense experts as cost is a major prohibiting factor.

Stated above.

Lack of supervision / enforcement of existing rules

Not knowing when a case will actually go out to trial. When a trial gets delayed within a month of trial, expert fees go through the roof, lay witnesses don't understand and then refuse to cooperate. This means you end up taking more perpetuation depositions which are expensive.

Courts and the legal profession's resistance to deploy new technologies, antiquated rules of evidence, excessive but ineffective regulation of the profession, inadequate judicial performance evaluation, virtually non-existent sanctions for judicial misconduct and malfeasance, excessive assumptions of judicial jurisdiction over political questions properly left to legislative bodies and development of a culture of predatory business and litigation practices.

In my 32 years in practice expert costs have gone from hundreds of dollars for a straightforward traffic collision matter to tens of thousands of dollars -- and if it's medical or complex technical issues, forget it. I've spent >\$50,000 on *one* expert in heavy equipment death cases. It's just embarrassing to tell your client that on top of all those fees the costs will be north of \$150,000 -- even if you're dutifully sending them itemized invoices every month.

Difficulty getting civil trials out in state court. Being on "standby" and having to reschedule all of your experts with significant cancellation penalties.

IFCA! Plaintiffs in UIM claims routinely file IFCA claims with their UIM lawsuits. This grossly increases the cost of litigation and the need to battle.

Failure of state system to adopt methods that allow more efficient uses of technology, for example the various forms required for pleadings across different state courts.

As previously stated, costs of medical testimony are outrageous. For example, a one hour deposition of a Harborview orthopedist will cost \$3,750.00 including administrative and preparation fees. Charges for medical records are also excessive.

Insurance companies that have adopted a business model to de novo all MAR rulings, resulting in a second, more expensive layer of litigation

In the workers comp arena, self insured employers and retro employer representatives often take "no holds barred" tactics in defending against valid claims, sidestepping the rules that apply in L&I law, resulting in (impecunious) workers having to litigate meritorious cases where there is no legitimate employer defense, at great cost (because most L&I law is driven by medical testimony); there are inadequate penalties for employers and no cost recovery (except in exceedingly limited circumstances) for the eventually successful worker. In family law cases, it is often necessary to get experts (to value pensions, to make recommendations re custody) which, added to attorney fees, is simply beyond the ability of most people to fit into their fractured budgets. This is exacerbated by the increasing practice of starting a dissolution proceeding with ex parte restraining order triggered by the first attorney out of the gate with a detailed affidavit and scant time for the respondent to reply adequately, or DV orders, which cast the parties into entrenched opponent mode, decreasing the possibility of rational resolution of issues.

Defense attorneys working on hourly basis provides motivation to litigate inefficiently.

Insurance lawyers churning cases.

Treating health care provider fees; wasteful motions practice

Defendants do everything possible to delay, hinder, impede, obstruct, and stall the progress of cases, apparently hoping to wear down the plaintiff or gain a theoretical tactical advantage. Dealing with this forces plaintiffs to waste resources on motions to compel that should be unnecessary.

Failure to enforce mediation in good faith. If ordered early and findings are entered relative to whether mediation was had in good faith and appropriate terms entered if not--it would help considerably. Most honest mediators will tell you defense insurance companies tie the mediators hands.

Big firms drive associates to bill excessive hours and discovery is a vehicle for acquiring those hours.

INSURERS are permitted to TAKE A LONG-TERM, GLOBAL strategy, to spend out cases well beyond their stakes, for the purpose of discouraging claims. And it works. I see cases of egregious and obvious med mal liability, but because the PC is not likely to have at least \$300K in damages -- regardless of whether it has wrecked their lives -- then it is simply not worth taking. (This threshold is an average, of course, not a bright line. If I only need two experts to prove the case, and the probability of a clean success is great, then the threshold comes down -- but not by as much as one would think). MY STRONGEST EMPHASIS is to PLEASE understand that complexity of the case drives costs more than the stakes involved in the case. I have learned enough medicine in injured worker cases that I am routinely invited to speak at neurospine surgery conferences for which physicians get CME credits for my presentations. They cost \$10K+ out of my pocket to defend, the vast majority of which involve need for further treatment and no chance of any recovery from which to pay costs or fees. L&I is broken in eastern washington.

Again recoverable costs are a huge underlying factor which WA attys don't understand--lack of experience. When the defense knows they will pay all of PLAINTIFFS depos costs, copy costs and experts, and well as their own, Defendant and Plaintiff considers the cases TOTALLY differently.

Plaintiff can go of it in Id and Ca on a case which would not be pursued in WA, because of allocation of cost of winning.

Court ordered standard discovery, triggering a fight with the defense over anything that is "not a court approved interrogatory". Court ordered mediation in substantial personal injury cases where an incentive is created for the insurers to send low level adjusters to mediation and to not make offers until mediation. Court ordered mediation when one party is unwilling to participate is costly and delays resolution of claims. If a party spends the time and effort to ask to be excused from mediation that request should be granted.

Defendants' abuse and noncompliance with discovery rules. Defendants' desire to stall. Defendants' desire to wear out plaintiffs and thereby push toward smaller settlements.

The higher the amount in controversy, the more discovery which the defense attorney can justify to the client. In medical malpractice cases, the defense attorney needs to put in her hours to make a living. When the stakes are high, the defense attorney has no difficulty justifying many hours of time and lots of discovery and experts, even when the outcome of the case is clear from the beginning. The ability of defense counsel to drive up the costs is enabled by the substantial time it takes from filing a complaint until the trial date. The two things which would rein in discovery costs and abuses would be (1) a single judge paying attention to the discovery situation in the case from filing to trial; and (2) shorter times between filing and trial dates.

Larger companies and/or insurers do not care what it costs to defend, they have the money and resources to throw at litigation and will do so in order to discourage plaintiffs and their attorneys from pursuing smaller cases or cases in which there are issues with liability.

Fox news, Rush Limbaugh, etc, have unbalanced the playing field and it takes massive attorney effort with consultants and graphics and high level training for Plaintiffs to overcome the bias against the civil justice process, jury trials and verdicts, and "trial lawyers". Large firms also have policies that require huge amounts of hours by defense lawyers and a case going to trial is a "cash cow" so motions and letters and multi day depositions, and multiple experts.....

The insurance companies know they can out last most of the litigators and drag out cases as long as possible. One huge problem is ever getting to trial as defense counsel claim to have no time available

for trial for months or even a year or more.

refusal to supply information requested

I do believe that larger firms tend to have excess resources, are looking for ways to use them. However, I do not think that the size of the firm is a predictor for discovery abuse - I've seen it with solo and small firms, as well. I think it is much more influenced by the values of the lawyers involved.

Hourly billing by defense attorneys.

Frankly increased prolonged check the box litigation from insurance counsel who will not negotiate prior to all discovery even in the most straightforward cases.

State court judges are much less willing to grant motions for partial or full summary judgment than in federal court, apparently in hopes that if they deny everything, the case will settle before trial. All it does in practice is cause flaky cases to drag out interminably because the issue cannot be narrowed down to what is legitimately in dispute.

Hope of punitive damages, such as under Insurance Fair Conduct Act, RCW 48.30.015.

Case schedule orders dictating that discovery must be done and experts disclosed by a certain date. Let the parties do discovery and come to the court when they are ready for a trial date. Artificial deadlines drive up costs.

Abusive, lengthy depositions.

Lack of alternative means of obtaining information, especially inability of defense to simply interview treating healthcare providers.

Blatant pro-plaintiff bias of too many judges

The number 1 factor is attorney fees, but that depends heavily on the plaintiff's attorney and her/his aggressiveness. The hyper-aggressive plaintiff firms in Washington have a business model designed to force companies to settle based on a cost of defense model and the threat that even if plaintiff recovers a small amount of damages, all the plaintiff's attorney fees will be recovered.

Greed

Defense attorneys often employ a "scorched earth" approach in which they expend disproportionate numbers of billable hours litigating lower value cases.

one side having access to spend lots on attorney versus the other side being poor.

Reluctance by the court to enforce its rules, especially against pro se litigants.

Anger. It only takes one party or one attorney to drive up the costs, and usually it's an angry client who allows his/her emotions and not logic/law to drive their position.

Intransigence by (mostly) defense counsel.

Firms with high hourly rates have an incentive to churn the file. Contingency-fee lawyers have no such incentives.

Lawyers who believe that "scorched earth" practices are to be encouraged.

Trial dates, continuances from opposing counsel not being ready, inexperienced judges (more on the bench come from criminal practice backgrounds)

All of the above to some extent; I have no opinion as to the weight to assign to each.

The unwillingness of state courts to get involved in discovery disputes early in the process

Lack of clear E-discovery rules in state court and an applicable body of case-law

Unwillingness of elected judges to dismiss weak cases because they fear offending influential constituencies

Most of my litigation is against the State -- represented by the Attorney General. The AGs have no incentive to reduce litigation costs and every incentive to increase costs to the private party. Unlike the

private litigant, the AG's "client" does not receive a monthly billing statement. Also, there are a lot of meritorious cases that never go to litigation because the dollar amounts at stake are too small. The State knows this, too.

In my county (Cowlitz) the time to trial (frequently 2-4 years) results in significant additional costs to parties. Without adequate funding, courtrooms and judges the cost of litigation always increases over time.

Expense of getting expert witness opinions in at trial.

1. In family law: Guardian ad Litem fees.

2. Client issues - expectations, fear, anger, greed, resentment, and emotional problems or issues..

1. Expectations and beliefs our clients have early in the litigation, before having incurred many fees, that they have a righteous position worthy of litigating, and often without a clear understanding of what the total of the likely costs are going to be.

2. "Prevailing party" attorney's fee statutes, where a party has incentive to litigate aggressively knowing that winning is the only way to have their fees paid.

3. "Need versus ability to pay" attorney's fees statute for family law matters. In family law matters, it is common for both parties to be heavily emotionally involved in their cases, often to the point of wanting to inflict financial harm on the other. The fee statute in family law cases often gives incentive to the poorer of the two parties to litigate aggressively, regardless of the merits, on the belief that their fees will be paid by the other party.

The unwillingness of courts to actively and realistically manage the process.

Attorneys who engage in overly broad requests to churn fees, and fear of malpractice if you don't engage in "standard of care" by doing likewise?

Attorneys who are paid by insurance companies are negotiating too low of hourly rates for themselves and thus billing more hours than necessary by withholding discovery. Their clients are the actual companies and are only paying a portion of the costs of the lawyer, so do not have an incentive to produce information and avoid unnecessary motions practice.

The belief of parties that there will be a winner at the end if enough money is thrown at the problem

The ability of counsel to unilaterally delay.

lawyers with too little work

Lack of civility among counsel. Lack of true enforcement and sanctions against counsel who file unnecessary motions, and/or are continually and perpetually unreasonable in their discovery positions.

Local Court rules and periodic reviews are probably the number one force to driving litigation costs. If King County and Pierce County got rid of local rules, there would be huge efficiencies in the court process.

High cost of ESI and judicial understanding of the process

Expert witness fees have soared dramatically in recent years to ridiculous amounts with doctors and experts often charging \$1,000/hr. Excessive number and scope of written discovery must be curbed.

State court judges reluctance to grant summary judgment. Unnecessary and silly court rules (e.g., "confirmations of joinder"). Unavailability of early and cheap arbitration.

Income inequality of the parties. A lot of rich litigants will just spend out the little guys

In the family law context, the "projects" ordered by the court are the frequent assessments for substance abuse, domestic violence, etc. and the year long treatment for the party that almost always ensues. Also, the additional cost of a guardian ad litem in contested custody cases.

Lawyer's liability concerns. Failure of the court to provide meaningful oversight of the discovery process. A large cadre of relatively inexperienced judges, many without any civil trial experience.

Defense attorneys wanting to bill hourly instead of early resolution of the issues. Courts not being willing to sanction attorneys/ parties for filing frivolous motions or abusing discovery

Canned discovery requests that do not relate to the actual case.

Lack of incentive to settle cases quickly

Attorneys using CR's to generate work and fees, not to get to the merits of the case.

I cannot emphasize enough how much the unequal bargaining positions of the parties comes into play in litigation and how little the Courts pay attention to it, which results in a completely inequitable court system.

Courier costs!! E-service should be mandatory.

The economics of the practice of law, for one, including the apparently widely held belief that all time spent on any activity is permissibly charged, as opposed to charging only for reasonable LAWYERING. In addition, charging lawyer-like rates for "paralegals," and other overhead surcharges whereas in days of old, the lawyers absorbed those kinds of expenses as overhead. How about, also, a "relaxed" sense of ethics in the profession, or evolved ethics, in which candor and the pursuit of justice give way to winning, and pursuit of money. Add to that the fact that our justice system, and most rules governing it, were established 2-300 years ago when most people were afraid of literally burning for eternity if they told a lie, whereas most people today, I suspect, believe that you are a fool to tell the truth if the truth is contrary to your interests. We have to go to great lengths to prove things not only because so many people lie, but because we expect them to lie, rather than to tell the truth.

use of arbitration for first run and then appeals by parties; in big business cases i am sure document acquisition and deposition costs are big drivers

Lack of cooperation by opposing counsel.

Attorneys fees is an ambiguous box. Risk of attorney fees should drive costs down. Attorney fees from over lawyering can drive them up. Class action fees are unspeakable.

Some attorneys "work" each case methodically without even addressing settlement until they have submitted every discovery request, taken depositions, filed motions, etc., especially if clients can pay, seemingly just to mine the case for as many fees as possible.

Court's slapping the wrist approach when it comes to bad faith compliance gives a green light to parties to withhold info. It brings into play a different analysis : what are the chances of and costs of getting caught vs destroy r, hide or withhold documents.

Defense attorneys have a substantial incentive to over-work cases as they are paid by the hour.

As long as discovery is not controlled in reasonable bounds, the cost of litigation will continue to escalate.

With shorter marriages, the issue of separate property and community property and commingling of assets is more prevalent. Every case has an average of 10 to 20 bank/brokerage/retirement accounts which substantially increases the costs of collecting the information and tracing separate and community property. The case law on division of mixes separate and community property in 10 to 20 year often time second marriages is unclear.

Discovery used as a club; not as a litigation tool.

I recently observed a trial that ended in a mistrial two days after the jury was selected. There were 175 motions in limine by the defense. During the opening argument by plaintiff's, defense counsel repeatedly made evidentiary objections ("objection. 403" was what was said). This sort of practice does nothing to get the case resolved but only makes it harder on folks. We need to push professionalism harder in addition to amending the discovery process. Of course, in view of the Stewart Title v. Sterling Bank case which came out today, defense counsel may feel freer to mount a different defense than asserting every possible argument. That case should be very helpful indeed on these points.

use of excessive experts, who generally have to be deposed, usually at great cost; experts who charge outrageous fees for depositions and trial testimony, typically approved by most judges if challenged
Inconsistent and unpredictable judicial decisions.

Too much leeway given to pro se and pro bono litigants who clog courts over minor issues.

any delay

Question 26

What type of legal organization do you work for?

Answer Options	Response Percent	Response Count
Private practice (solo)	35.4%	159
Private law firm	52.3%	235
Nonprofit law firm	0.9%	4
In-house counsel for corporation	7.3%	33
Government/Public Sector	4.0%	18
<i>answered question</i>		449
<i>skipped question</i>		72

Question 27

How many lawyers are in your office, or if a private law firm with more than one office, how many lawyers work for the entire firm?

Answer Options	Response Percent	Response Count
Solo	34.5%	155
2-5	26.9%	121
6-10	13.6%	61
11-20	5.6%	25
21-35	6.0%	27
36-50	4.7%	21
51-100	2.7%	12
More than 100	6.0%	27
<i>answered question</i>		449
<i>skipped question</i>		72

Question 28

Which county in Washington State did/do you practice in primarily?

Answer Options	Response Percent	Response Count
Adams	0.0%	0
Asotin	0.0%	0
Benton	1.3%	6
Chelan	1.8%	8
Clallam	0.0%	0
Clark	5.4%	24
Columbia	0.0%	0
Cowlitz	0.7%	3
Douglas	0.0%	0
Ferry	0.0%	0
Franklin	0.2%	1
Garfield	0.0%	0

Grant	0.4%	2
Grays Harbor	0.9%	4
Island	0.2%	1
Jefferson	0.7%	3
King	56.6%	253
Kitsap	3.6%	16
Kittitas	0.2%	1
Klickitat	0.0%	0
Lewis	0.4%	2
Lincoln	0.0%	0
Mason	0.7%	3
Okanogan	0.0%	0
Pacific	0.2%	1
Pend Oreille	0.0%	0
Pierce	9.2%	41
San Juan	0.0%	0
Skagit	0.9%	4
Skamania	0.0%	0
Snohomish	4.5%	20
Spokane	3.8%	17
Stevens	0.0%	0
Thurston	4.3%	19
Wahkiakum	0.2%	1
Walla Walla	0.4%	2
Whatcom	1.8%	8
Whitman	0.0%	0
Yakima	1.6%	7
<i>answered question</i>		447
<i>skipped question</i>		74

Question 29

To gain a better understanding of our demographics, we are including a few optional questions.

Ethnicity										
Answer Options	American Indian/Alaskan Native	Asian	Black/African descent	Caucasian	Spanish/Hispanic/Latina/o	Multi-racial	Pacific Islander	Other	Choose not to respond	Response Count
Demographic questions	2	13	3	325	5	6	0	6	23	383

Gender				
Answer Options	Male	Female	Choose not to respond	Response Count
Demographic questions	234	136	13	383

Age								
Answer Options	21-30	31-40	41-50	51-60	61-70	71 or older	Choose not to answer	Response Count
Demographic questions	14	61	85	111	89	10	12	382

Sexual Minority				
Answer Options	GLBT	No	Choose not to answer	Response Count
Demographic questions	16	287	32	335

Disability				
Answer Options	Yes	No	Choose not to answer	Response Count
Demographic questions	10	300	31	341

		Question Totals
<i>answered question</i>		386
<i>skipped question</i>		135