

## **Discovery Scenarios**

### **Scenario 1: Discovery Obstruction**

You represent Wife in a dissolution proceeding. Husband is a self-represented litigant. Depositions are scheduled in three weeks, but you have been unable to obtain any financial records from husband. The majority of the assets are held in husband's name, but wife does not know the particulars of the financial affairs, or which institutions the assets are held in order to issue subpoenas. You have sent a Request for Production of Documents, and Husband failed to respond. You have conferred by e-mail, telephone and letter without any response.

What is the best way to proceed?

- A. File a Motion to Compel
- B. Request a status conference with the Judge prior to depositions.
- C. Issue an Amended Notice of Deposition, requiring Husband to bring responsive documents to the deposition. If fails to do so, call the judge for guidance.
- D. Request a status conference with the Judge prior to depositions.
- E. Reserve your right to keep depositions open, ask about the location of Husband's assets during the deposition, issue subpoenas for those institutions, and have continued depositions scheduled following receipt of the additional discovery.

### **Scenario 2: Discovery/Ethics**

You represent Husband in a dissolution proceeding. Wife's attorney recently withdrew from the case and she has opted to continue as a self-represented litigant. After you issue a Request for Production of Documents, wife provides responsive discovery in a timely manner. As you review the discovery, you realize that she has provided extensive amounts of privileged e-mail communications with her attorney prior to his withdrawal. The communications relate to settlement and trial strategies.

What is the best way to proceed?

- A. Notify Wife that she has waived all attorney-client privilege by voluntary disclosure, and seek to obtain the attorney's entire file
- B. Immediately notify wife of the inadvertently-sent privileged material and return, without reading any further.
- C. Say nothing, review, and attempt to use the materials to your advantage during the case.
- D. Advise Wife that she should obtain counsel.