

Local Rule 37-1 Letter

[DATE]

BY FAX

[TIP: Fax the L.R. 37-1 Letter as early in the day as possible so as to give the opposing party the maximum amount of notice; keep a transmission record and attach it along with a copy of your letter to your declaration of non-cooperation]

Name of Each Opposing Party or Counsel
Address of Each Opposing Party or Counsel

Re: Case Name, correct case number

Dear [Opposing Party/Counsel]:

Pursuant to Local Rule 37-1, please be advised that I am requesting a conference in order to eliminate the need for a hearing, or to eliminate as many of our disputes, regarding the following discovery matters.

Request For Production Of Documents

Response To Request No. 1

In your client's written responses, [s/he][it] objects to this particular request on the ground(s) that [identify specific ground(s)]. Please be advised your client's objection(s) is[are] without merit because [discuss specific points and authorities supporting your client's position; be objective and avoid any unnecessary characterizations or accusations that would be counter-productive to achieving an informal resolution.]

[TIP: If done correctly, your discussion of the specific points and authorities supporting your client's position can be copied with little, if any, revision into the joint stipulation or motion itself if the opposing party fails to cooperate in the preparation of the joint stipulation. The time spent in researching and explaining your position will be worthwhile since it will help in evaluating your position, and will either result in an informal resolution of the dispute or substantially reduce the time needed to prepare and finalize the joint stipulation and/or motion.]

[DATE]

Opposing Party/Counsel

Page 2

TIP: If a legitimate dispute exists and your own research discloses the chance of prevailing is questionable or remote, give serious thought about whether the time and expense is worth the battle, particularly if the items being sought are of questionable evidentiary value. A good idea is to suggest a compromise position.]

Pursuant to Local Rule 37-1, please be advised that we are required to conduct our conference [in my office][telephonically] no later than ten days from today's date. I am available to meet on the following three dates at the times indicated:

1. Date & Time
2. Date & Time
3. Date & Time

[TIP: Give opposing party at least three dates and times, the third date being set on the tenth or last date, preferably at a time one would reasonably be expected to be available. For example, setting dates on the third, fifth, and tenth day, either in the early morning, noontime, or late afternoon, would make it difficult for opposing counsel to argue that you did not provide reasonable notice or times to meet]

[TIP: If the opposing counsel is being represented by a law firm that is staffing the case with several lawyers in the law firm, request that at least one of the opposing counsel be available and demand an explanation if none of them are ostensibly available to meet with you.]

Since your client's foregoing objections are set forth in written responses, which you signed in accordance with Rule 11(a) of the Federal Rules of Civil Procedure, I will presume they "are warranted by existing law" or constitute "nonfrivolous arguments" and you are already, or will be, fully prepared to engage in a meaningful discussion of the legal points and authorities for your client's objections and our aforementioned contentions at our conference.

Consequently, and in a further effort to expedite matters, enclosed please find a draft of the joint stipulation with our portion of the stipulation that includes, in the form required by Local Rule 37-2.1: (1) the disputed discovery requests, (2) your client's objections, (3) my client's contentions for each disputed request, and (4) a space to insert your client's contentions for each disputed request. If possible, please [bring a 3 1/2" standard sized floppy diskette to our conference with][e-mail] your client's contentions for each disputed request so we can finalize and sign the joint stipulation if we are unable to resolve all of our disputes. Please have the computer file formatted in [identify your firm's word processing program]

[DATE]
Opposing Party/Counsel
Page 3

or ASCII.

[TIP: Your opposing party or counsel, at least in theory, should already know the legal basis for the written objections to your discovery requests. Accordingly, requesting the party to prepare and bring its contentions to the conference is not unreasonable. Further, by including a draft of the joint stipulation with your client's contentions with your letter, the opposing party will know you are serious and may back down from some or all of its objections.]

Where we agree with your contentions or you agree with ours, we will simply delete the corresponding issues from the motion. At the least, by having each other's detailed contentions at the meeting, we should be able to greatly narrow the issues.

I will call you within the next two hours to confirm your receipt of this fax letter and set a date and time for our discovery conference. If none of the foregoing dates and times are convenient, please be prepared to give me at least three alternative dates and times that are convenient to you.

If you are not in or available to speak when I call, and I do not hear from you [or your colleague/co-counsel] **by 5:00 p.m. tomorrow** with alternative dates, I will assume you will be available to meet on the third proposed date and time set forth above; the last available meeting date. Accordingly, a [non-appearance][failure to participate in a telephone conference] on the last proposed date will be construed as a refusal to comply with Local Rule 37-1, after which my client will bring the motion to compel without the benefit of a joint stipulation. Copies of this letter and the enclosed draft of the joint stipulation will be attached as Exhibits A and B, respectively, to my declaration of non-cooperation accompanying the motion. A request for other forms of appropriate relief under Local Rules 37-4, 27, F.R.Civ.P. 37, and 28 U.S.C. §1927 will also be made.

[TIP: BE REASONABLE AND OVERLY ACCOMMODATING IF NECESSARY!!! If, for example, the opposing party fails to call until the sixth day and then asks to meet within a reasonable time after the tenth day deadline, the moving party should make every effort to accommodate this request, especially if the opposing counsel has a reasonable, good-faith excuse for failing to respond by the time requested. Remember, the goal is to avoid the need for a hearing at all and, if all of the disputed issues cannot be resolved, obtain a joint stipulation so its easier for the Court to understand the contentions and issue a correct ruling. The more courteous, flexible, and accommodating the moving party appears to have been, the more credibility that party will have with the Court; conversely, the Court is more likely to take the appropriate measures against an opposing party whose unreasonable lack of cooperation is

[DATE]
Opposing Party/Counsel
Page 4

perceived to be the cause for the discovery dispute and lack of a joint stipulation.]

Please do not hesitate to call if you have any questions or comments. Meanwhile, I hope to hear from you before 5:00 p.m. tomorrow.

Sincerely,

Moving Party

cc: [Opposing co-counsel]