

**FEDERAL COURTS LAW REVIEW -- 2005 Fed. Cts. L. Rev. 7**  
**BOOK REVIEW**  
**DISCOVERY: FASTER AND SHORTER**

A review of Discovery Problems and Their Solutions  
by Hon. Paul W. Grimm, Charles S. Fax, and Paul Mark Sandler  
(Paperback) (American Bar Association 2005)

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[1] Despite never-ending efforts of the bench and bar to reduce the cost and complexity of discovery in civil cases, discovery continues to be the most expensive and time-consuming aspect of civil litigation. United States magistrate judges, to whom so many discovery disputes are referred, are frequently stunned into silence when they award attorneys' fees as a sanction and later "see the bill". It is now common for prevailing lawyers to claim that thousands of dollars have been spent in a process that resulted in nothing more than continuing or ending a deposition or finally getting answers to interrogatories or requests for production of documents. Additionally, while these expensive discovery disputes rage, the rest of the case often comes to a standstill, mocking the intention of the Federal Rules of Civil Procedure to create a simple and efficient means of resolving civil disputes that is no more expensive than necessary.

[2] If one of the causes of this phenomenon is lawyers' ignorance of how the discovery sections of the Federal Rules of Civil Procedure are designed to operate and how they work in practice, then an excellent antidote is the publication, *Discovery Problems and Their Solutions*, written by United States Magistrate Judge Paul W. Grimm, Charles S. Fax, and Paul Mark Sandler and published by the American Bar Association ("ABA") Section of Litigation.

[3] The authors appreciate that, as they put it, "the United States civil justice system has witnessed a litigation explosion and trial implosion." Paul W. Grimm, Charles S. Fax, & Paul Mark Sandler, *Discovery Problems and Their Solutions* xi (2005). As the number of jury trials in civil cases decreases dramatically, litigants in federal court now engage in intensive, expanded, and frequently expensive discovery, followed by equally intensive settlement discussions that resolve the case nearly every time. The authors are certainly correct that, in this new model of litigation, understanding how to conduct discovery is critical to success. Indeed, discovery now consumes nearly all of the time a lawyer spends on a new case, and a lawyer who does not understand how to use discovery or how to prevent its abuse by her opponent is as dangerous as a lawyer who does not know how to negotiate. This book is designed to insure that the lawyers who read it have the fundamental discovery skills they need.[4] The book is nothing if not pragmatic and practical. It is divided into four sections: (1) Interrogatories, Document Requests, Requests for Admissions, and Motions for Mental and Physical Examination; (2) Depositions; (3) Experts; and (4) Sanctions and Protective Orders. Each section is subdivided into subsections that deal with specific topics, such as "Discovery of Draft Report by Testifying Expert". Every subsection begins with a hypothetical problem and then discusses the pertinent sections of the Federal Rules of Civil Procedure that pertain to its resolution and the case law interpreting the rule. Where there are conflicts within the case law, they are acknowledged, and the authors suggest which interpretation seems to be commanding the most allegiance. The hypothetical is then resolved, and the chapter ends

with eminently useful "Practice Tips" in which the authors suggest everything the lawyers in the hypothetical could and should have done to avoid the problem in the first place. If the problem was unavoidable, the authors instruct their readers as to how to put their client's position in the best possible light when judicial resolution of the problem becomes inevitable.

[5] There is a healthy emphasis throughout the book on the important supplementation that a court's local rules provide to the Federal Rules of Civil Procedure. While the Federal Rules create a national and uniform set of procedures, the local rules create important variations that lawyers ignore at their peril. A lawyer may, for example, serve a discovery response that the Federal Rules permit to be answered within 30 days only to learn that a local rule further requires the request to be made so that the answer is due before the cutoff date the court has set for discovery. The authors remind lawyers again and again that if they insist on being blissfully ignorant of such local rules, they will be forcefully reminded of their ignorance by a judge whose time they have wasted by having done exactly what the local rules told them they could not do.

[6] The analysis is concise even when the authors are relating the provisions of the discovery rules to each other or the Federal Rules of Evidence with which they so frequently intersect. With two exceptions, the book is mercifully free of complicated footnotes that haunt so much legal academic writing, and the authors' prose style is matched to their task. They are faithful to the wonderful advice they give lawyers who write briefs in discovery disputes: "Make your brief brief". *Id.* at 249. They also remind lawyers that they need only discuss their discovery problem and the controlling authority in the Circuit where the court sits, an important reminder to junior lawyers, often assigned to write briefs in discovery disputes, who cite authority from every Circuit except the one in which the dispute is pending.[7] The book is also designed to create a single, handy source of all the material the lawyer needs to handle discovery problems. Federal Rules of Civil Procedure 26-37, Rule 45, and the ABA Civil Discovery Standards, which have proven most influential, are appendices. Since the book is a paperback, it is designed to be taken to a deposition or to court for quick reference.

[8] Obviously, given the authors' intent, those looking for an academic and theoretical discussion of the Federal Rules of Civil Procedure will have to look elsewhere, probably in the two multi-volume texts that dominate the scholarship, Moore's Federal Practice and what lawyers know as "Wright and Miller". See James W. Moore et al., *Federal Practice* (3d ed. 1997); Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* (3d ed. 2005). But, this book provides the judge and practitioner with a well-organized, problem-oriented reference to the text of the discovery rules and their judicial interpretation. It also offers a pragmatic, clear, and authoritative exposition of how those rules work in their daily operation. I suspect that it will be paid the ultimate compliment a law book can get. It will be dog-eared and annotated by its owners who will put it where it belongs--in the middle of their desks, ready to help them get to work when they confront their next discovery problem.

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