Practice Hints for Motions to Compel

When starting discovery:
- Make the requests clear and narrow
- Start early enough to allow time to resolve motion to compel before discovery deadline
- Avoid the dialectic dilemma - you think you know what you want and what the opponent has, you ask for a broad range, the opposition understands the request as overbroad and perhaps cannot read what you really want in what you asked

When responding to discovery:
- Identify documents that are responsive
- Make an adequate privilege review and log

When negotiating extensions for discovery answers:
- Stipulate to extend time for answers not for objections
- Stipulate to shorten times for briefing any necessary motions

Make the 'meet and confer' meaningful:
- Get out of the "blame-shifting" mentality of litigation
- Meet in person - meet at the net, don't lob grenades from backcourt
- Allow enough time to really discuss and resolve the problem
- Collaborate on the appendix[1] for the motion - this process may resolve disputes
- Can you stipulate as to the issue?

Motion, Memorandum, Declaration, Appendix
- Draft assuming you will not argue the motion - don't expect to be clear later
- Clearly state the relief desired
    - Be realistic - dismissal/judgment is unlikely unless conduct is egregious
- Don't neglect to propose a narrowed request
- Get courtesy copies to the judge - *even if e-filing*
- If you need to expedite, ask opposing counsel and if counsel does not agree, ask the court
- Prepare an appendix and submit it in WordPerfect format
- Notify chambers if briefing is extended by agreement
- If the motion is resolved, withdraw it of record

Arguments not to make:
- They did it first
- They did it worse
- Its bad – because they want it

Expenses - Attorney's Fees
- Based on contemporaneously created time records, with detail
- Justify rates in market
- Only include expenses incurred in the motion, not in discovery

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[1]   DUCivR 37-1(b).

The Spectrum of Motions to Compel

Worst Cases	*Most Cases*	*Minor Cases*
Utter Failure	Partial Response	Dissatisfaction with answer
	Failure to sign	Requests construed to create
	Inadequate privilege log	dispute/burden
	Failure to specify documents	
	Disputes about time frame and detail	

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