

# “Top of the Funnel” Examinations

USDC – RI Litigation Academy

U.S. District Court for the District of Rhode Island

Federal Bar Association

Roger Williams University Law School

# Discovery Tools

Interrogatories

Requests for Production

Requests for Admission

Depositions

# Why Do We Take Depositions?

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- To learn what the witness knows
- To confirm what we think the witness knows
- To discover other witnesses, facts, documents
- To test the completeness of discovery responses
- To authenticate documents
- To secure admissions
- To prepare for cross-examination
- To prepare for a dispositive motion
- To see how a witness will respond to questioning
- To prepare for ADR
- To preserve testimony for trial

# When to take Depositions?

- Rule 26(d):

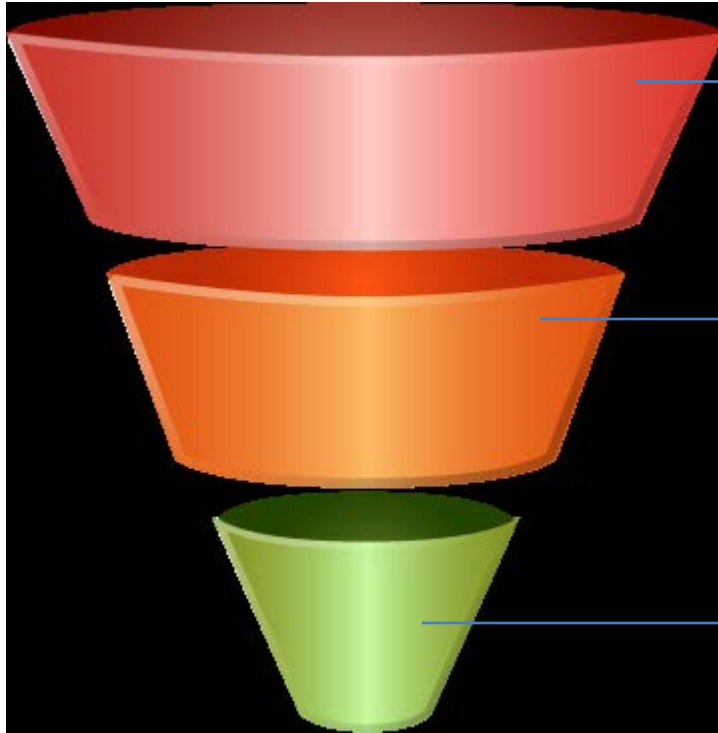
A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)....

# When to take Depositions?

## Preliminary Discovery:

- interrogatories
- document requests
- subpoenas to third-parties
- requests for admissions
- other depositions
- investigations

# The Funnel Method



Open-ended: Who, What, Where, When, Why. Tell me about...

More targeted questions: Follow up. Fill in gaps. Theory test.

Leading: Lock in admissions.

# Word Count

Top



Middle



Bottom





# The Funnel Method



# Top of the Funnel Questioning

-Who

-How

-What

-Describe...

-Where

-Explain...

-Why

-Tell me about...

-When

# Oral Prompts

-What next?

-Tell me more about...?

-And then?

-What else?

-How about...?

-Have you now told me everything you know about...?

# Non-Oral or Visual Prompts

-Silence

-The Head Nod

-The Raised Eyebrow



# Don't

-make assumptions about what the witness knows.

-start a question with: “Do you remember...?”

“Do you recall...?”

“Do you know...?”

-be wedded to your notes.

# Documents

- Author?
- When created?
- Why created?
- What does it say?
- Who has seen it?
- Where is it kept?
- Edits / amendments?
- Electronic versions?
- Paper copies?
- Produced in discovery?



# Conversations



- Where?
- When?
- Who heard?
- What was said?
- Recordings / documents?
- Close off.

# Meetings

- Who called the meeting?
- Who attended?
- When? Where?
- Context?
- Documents distributed?
- Who said what?
- Minutes or notes?
- Powerpoint? Charts?
- Action items?





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