

# CIVIL PRACTICE POT POURRI 2012

*presented by*

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# OVERVIEW

- Errata Sheets: Fact or fiction
- Discovery Sanctions: Just ask
- Proof of Medical Expenses: What is it worth?
- Jurors: No Facebook please

# ERRATA SHEETS: FACT OR FICTION

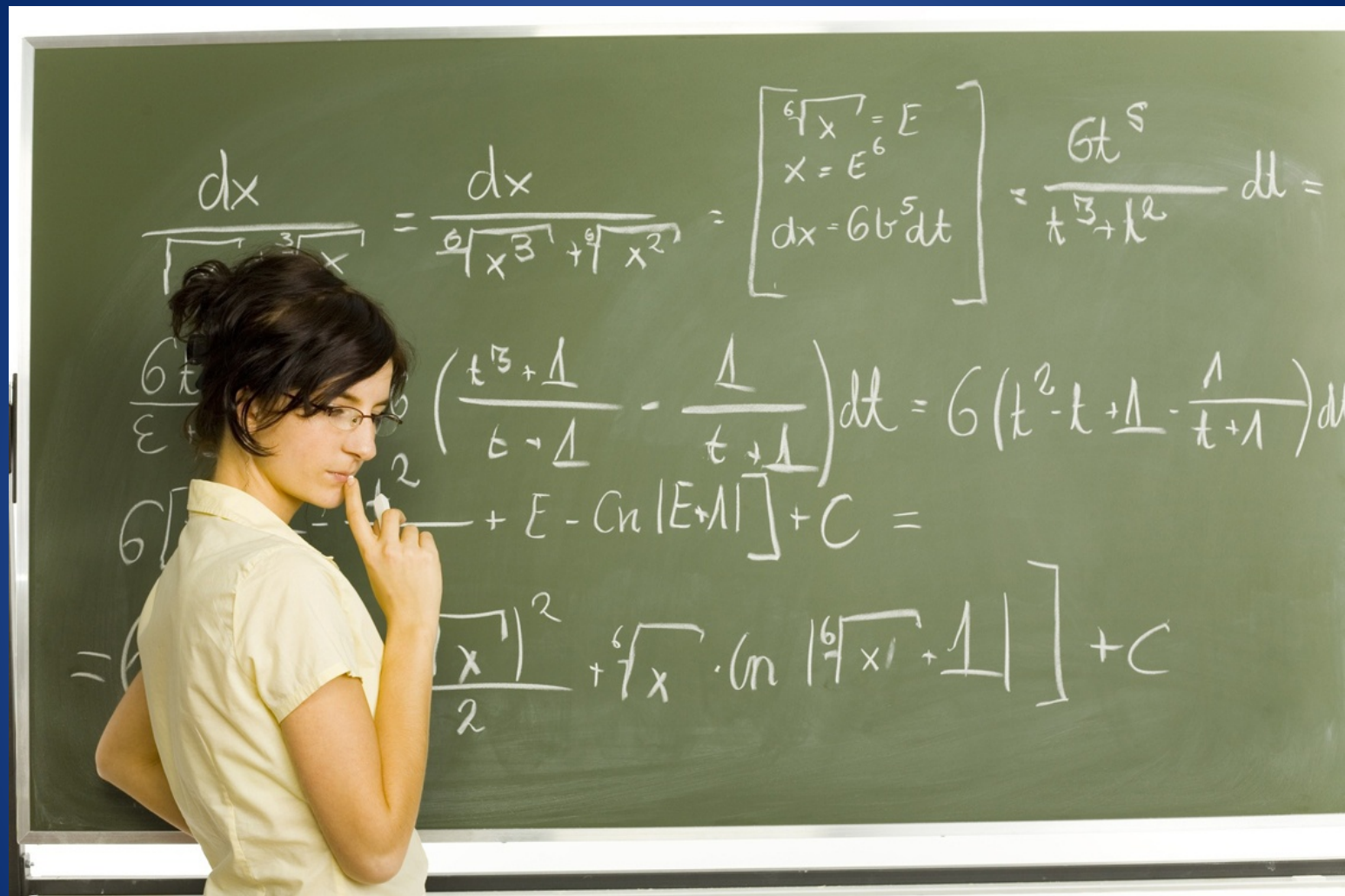
*To change or not to change –  
that is the question*



*There's no need to panic*



*There's no need to reach for the 'want ads'*



*You need to figure out how to fix it*



*Smaland Beach  
Association, Inc. v. Genova,  
461 Mass. 214 (2012)*

# Smaland errata changes

- Changing Answers:

“I’d say no”	<i>changed to</i>	“I’d say yes”
“I don’t believe”	<i>changed to</i>	“I believe”
“Yes”	<i>changed to</i>	“Yes, but”

- Striking seven lines of testimony
- Adding nine passages



# Rule 30(e)

“Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of reasons given by the witness for making them.”

# “Legitimate Corrective Changes”

- Any changes can be made.
- Original answers are part of the record.
- Deposition can be reopened

# Safeguards

1. Changes must represent deponent's own good faith belief
2. Changes must comply with procedural requirements

# Remedial Measures

- Original answers remain part of the record
- Deposition may be reopened
- Sanctions may be awarded

# DISCOVERY SANCTIONS

*Just ask?*

# Types of discovery sanctions

- Evidence preclusion
- Entry of default judgment
- Dismissal



# Standard of Review

*Discovery sanctions are reviewed by the appellate court under an abuse of discretion standard.*

# Representative Recent Cases

*Short v. Marinas USA Limited Partnership, 78 Mass. , 78 Mass. App. Ct. 848 (2011)(default judgment)*

*Vazquez-Rijos v. Anhang, 654 F.3d 122 (1<sup>st</sup> Cir. 2011)(dismissal for noncompliance with discovery orders)*

*Samaan v. St. Joseph Hospital, 670 F.3d 21 (2012)(late disclosure of witness precluded)*

# When to Sanction

- Failure to abide by court order
- Failure to answer interrogatories, requests for production
- Failure to appear for deposition
- Obstructionist adversary

# Level of Conduct

## Degrees of misconduct

sort of bad → really bad → extreme → wilful

## For example:

- protracted inaction
- disobedience of court orders
- ignoring warnings

# PROOF OF MEDICAL EXPENSES

What is it worth?

In the wake of

*Law v. Griffith,*  
*457 Mass. 349 (2010)*



# GENERAL LAWS, CHAPTER 233, SECTION 79G

*An itemized bill and reports for a person injured relating to medical services subscribed and sworn under the penalty of perjury by the physician or authorized agent of the hospital shall be admissible as evidence of the fair and reasonable charge for such service or the necessity of such services or treatments.*

# GENERAL LAWS CHAPTER 233, SECTION 79G

Nothing in the section can be construed to limit a party from summoning a physician or agent of the hospital or the records for cross examination with respect to the bill or record or to rebut the contents or for any other purpose or to limit the right of a party to summon another person to testify regarding the bill or record for any other purpose.

# Case Handling

- Identify disparity
- Subpoena documents of reimbursement rate
- Trial strategy:
  - Testimony
  - Stipulation

# JURORS: NO FACEBOOK PLEASE



*Commonwealth v. Werner,*  
*8 Mass. App. Ct. 689 (2012)*

“Instructions not to talk or chat about the case should expressly extend to electronic communications and social media.”