

## EXERCISE

### SUPPORTING MOTION PAPERS

#### *Background*

You're on a litigation team that's been involved in a lengthy discovery dispute with the other side. Opposing counsel claims that the documents it originally produced are responsive to the Request for Production at issue.

The partner had two meet-and-confer sessions with opposing counsel about this issue. Then a senior associate, who has since left the firm, had a third one. The parties exchanged several emails and letters memorializing the meet-and-confers.

Your team is finally filing a motion to compel seeking the discovery that opposing counsel has refused to provide. You've been asked to think about what documents should be filed along with the brief, and to draft them.

#### *Instructions*

Come prepared to discuss these questions:

- Will you need affidavits and/or declarations to support the brief? Why?
- How can you provide supporting evidence about the third meet-and-confer session despite the senior associate no longer being at the firm?
- When you draft an affidavit to authenticate the email memorializing the first meet-and-confer, how might you word the statement?
- Will you prepare a proposed order to file with the motion? Why or why not?
- Would it be possible to serve your papers electronically, even though your rules don't specifically provide for electronic service? If so, how would you do it and what proof of service would you need to include with your brief?