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A new lawyer's guide to basic discovery rules

RESPONDING TO WRITTEN DISCOVERY INCLUDING INTERROGATORIES, PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION

You are a newly admitted lawyer and you've landed your first job helping your client obtain justice by fighting against the insurance companies. The first thing you are tasked with is responding to written discovery. You spend time with the client gathering the requested information and then you insert those answers in your template. You provide responses to the questions you think you should answer and object to the questions you don't like. Simple, right?

Several things can happen next: Your responses are fine and you don't hear from defense counsel; or you receive a meet and confer letter because your responses are not code compliant; or you find out during your client's deposition that they forgot about the two workers' compensation claims they filed in the past which they responded under oath did not exist, and now your client looks like they are hiding something.

The discovery phase is among the most critical in developing and proving your client's case. Use discovery tools not only to obtain evidence of the defendant's bad acts, but also to discover the weaknesses in your own case.

Some of us learned the hard way that clients are not always the best record keepers. It is understandable that someone does not necessarily understand the procedure for filing a workers' compensation claim and does not believe they filed one even though they did tweak their knee at work one time. This information can be easily verified by looking your client up on the EAMS website. It is public information, so a few clicks can help you verify whether your client has ever filed a claim.

A wise person once told me to speak with your client and gather the information, but then look through the file documents, search online, and verify all the responses. If something doesn't match, clear it up with your client before you serve your responses. You can look up workers' compensation claims at https://eams.dwc.ca.gov/WebEnhancement/.

In addition to verifying the information received, serving code-compliant responses to written discovery the first time around can save you time and unnecessary discovery disputes with opposing counsel. Save the meet and confers for when there is a real dispute as to what information you believe they are entitled to.

Below are some of the basic rules set forth in the Code of Civil Procedure regarding what constitutes appropriate responses to interrogatories, requests for production, and requests for admission. Familiarize yourself with the requirements of a code-compliant response and it will spare you spending time amending your responses and will streamline the way you review the opposing party's responses.

Responses to interrogatories

Appropriate responses to interrogatories include providing an answer, denying knowledge, producing documents, or objecting to the interrogatory.

Providing an answer

You can respond to an interrogatory by providing an answer containing the information sought. In providing responses to interrogatories, you have a general duty to conduct a reasonable investigation to obtain responsive information.

Answers to interrogatories must be as complete and straightforward as possible and must be based on personal knowledge or knowledge that is reasonably available to the responding party. (Code Civ. Proc., § 2030.220, subds. (a) and (c).)

This means that the responding party must not only provide information known to them, but they must also provide information known by their attorney, so long as that information is not protected from discovery by the attorney-client privilege or work-product privilege. (*Regency Health Services v. Superior Court* (1998) 64 Cal.App.4th 1496, 1504.) For instance, when responding to interrogatories, a responding party's attorney should disclose all witnesses they have knowledge of regardless of whether the client has knowledge of the witnesses. (*Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 12.)

The responding party must also provide information available from sources under their control, such as their agents or employees (Code Civ. Proc., § 2030.220, subd. (c)), and they must make a reasonable and good-faith effort to obtain information from related persons or entities cooperating with them in the lawsuit. (*West v. Johnson & Johnson Products* (1985) 174 Cal.App.3d 831, 874.) For instance, in *Jones v. Superior Court* (1981) 119 Cal.App.3d 534, 553, it was determined that the plaintiff should have attempted to obtain information from her mother even though her mother was accessible to defendants through deposition. (Disapproved on other grounds, *Williams v. Superior Court* (2017) 3 Cal.5th 531.)

Denying knowledge sufficient to respond to interrogatories

A party can respond to an interrogatory by stating they cannot answer the interrogatory because they do not have sufficient knowledge. (Code Civ. Proc., § 2030.220, subd. (c).) However, if the responding party states they cannot answer due to lack of knowledge, they must state the following: (1) responding party does not have sufficient personal knowledge to answer the interrogatory *and*; (2) the responding party must state they made a reasonable and good-faith effort to obtain the requested information from other individuals and organizations.

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(Code Civ. Proc., § 2030.220, subd. (c).)

Producing documents in response to interrogatories

Pursuant to Code of Civil Procedure sections 2030.210(a)(2) and 2030.230, the responding party has the option to answer an interrogatory by identifying and producing documents containing the requested information instead of producing the information in the answer itself. However, this option can only be exercised if (1) the response would require a compilation, abstract, audit, or summary of documents; (2) the burden or expense of preparing a compilation, abstract, audit or summary of the documents would be substantially the same for the discovering party as it would be for the responding party; and (3) the response must be timely. (Code Civ. Proc., §§ 2030.230 and 2030.290 (timeliness).)

Pursuant to Code of Civil Procedure section 2030.230, the response itself must refer to Code of Civil Procedure section 2030.230 and must specify the writings from which the answer can be obtained. This specification must identify the documents with sufficient detail to allow the discovering party to locate and identify the documents containing the requested information as readily as they could be identified and located by the responding party. Further, the responding party must either give the discovering party a reasonable opportunity to inspect and make copies of the documents or attach the identified documents as exhibits to its response.

A sample response would be, "This interrogatory would necessitate the preparation of a compilation, abstract, audit, or summary from documents. (Code Civ. Proc., § 2030.230; *Brotsky v. State Bar of Calif.* (1962) 57 Cal.2d 287.) Plaintiff exercises the option under section 2030.230 of the Code of Civil Procedure to produce writings in response to this Interrogatory. Plaintiff refers Defendant to the medical records generated as a result of this incident, which are attached as Exhibit A."

Objections to interrogatories

A party can respond to interrogatories with written objections or moving for a protective order. If objections are made, the responding party should assert specific objections and not simply list boilerplate objections that state multiple grounds for objecting without considering whether the multiple objections apply to the interrogatory. (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 291.) Refrain from using the exact same objections for every single interrogatory as boilerplate objections may subject the responding party to sanctions. (*Korea Data Systems Company v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

Requests to produce documents

A request to produce permits a party to secure access to documents, electronically stored information, land, and other tangible things for inspecting, copying, measuring, testing, photographing, sampling, or surveying. (Code Civ. Proc., § 2031.010.)

A party can respond to a request to produce by (1) serving a statement of compliance; (2) serving a statement of inability to comply; or (3) making a written objection.

Statement of compliance for requests to produce

The statement of compliance can either be for *complete* or *partial* compliance. If the responding party agrees to comply with all the conditions of the demand, the response should state that the party will produce the things demanded for inspection, copying, testing, sampling, or any other related activity, the things demanded are in the possession, custody, or control of the party, and the party makes no objection to producing the things demanded. (Code Civ. Proc., § 2031.220.)

If the responding party agrees to comply with only part of the demand to produce, the response should state that the party will produce *in part* the things demanded for inspection, copying, testing, sampling, or any other related activity, identify the things the party will produce, state that these things are in the possession, custody, or control of the party and that the party has no objection to producing them. The responding party must further state they are unable to comply with the rest of the demand and include a statement of inability to comply for the things the responding party will not produce. (Code Civ. Proc., § 2031.220.)

Further, if documents will be produced in response to the request to produce, the Code of Civil Procedure requires that any document or category of documents produced in response to a request or inspection, copying, testing, or sampling be identified with the specific request number to which the documents respond. (Code Civ. Proc., § 2031.280, subd. (a).) This requirement makes the process of reviewing produced documents more efficient. It also helps clarify whether documents were in fact produced in response to each category. Imagine receiving a response that states that "Responding Party will produce documents in its possession, custody, or control," accompanied by thousands of documents that are not labeled or organized in any given order. It would take time to sort through the documents and figure out if documents for each request were actually produced. That is no longer the case.

However, legislators did not specify how parties should identify the documents that are responsive to multiple requests or how to update or supplement their original labeling of responsive documents. Parties may comply with this requirement by citing specific Bates numbers, or by labeling the documents with an exhibit number. Discovery sanctions may be appropriate where a party fails to organize or categorize the documents. (*Kayne v. The Grande Holdings Limited* (2011) 198 Cal.App.4th 1470.)

Statement of inability to comply for requests to produce

The responding party can also respond to a request to produce by

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serving a statement that they are unable to comply with the demand. (Code Civ. Proc., §§ 2031.210, subd. (a)(2) and 2031.230.) The statement of inability to comply *must assert that the party made a diligent search and reasonable inquiry in an effort to comply and must include the reason that the party is unable to comply.*

The responding party must explain why they are unable to produce the documents by setting forth that the documents have been lost or misplaced, inadvertently destroyed, stolen, never existed, or are not in the defendant's possession – in which case the responding party is required to state the name and address of the entity or individual which they believe is in possession, custody, or control of the documents. (Code Civ. Proc., § 2031.230.)

A sample response would be: "After diligent search and reasonable inquiry, Responding Party is unable to comply as the requested documents never existed."

Objecting to requests to produce

Objections to a request to produce must identify with particularity the document, electronically stored information, land, or other tangible thing being objected to and must identify the specific ground for the objection. (Code Civ. Proc., § 2031.240 subds. (b)(1) and (b)(2).)

Further, a party can object to all or only part of an item or category of items in a demand to produce. If a party objects to only part of an item or category of items, the response must contain a statement of compliance or inability to comply for the rest of the demand. (Code Civ. Proc., § 2031.240, subd. (a).)

Keep in mind that if an objection to the request to produce is based on a privilege, the responding party must provide sufficient factual information for other parties to evaluate the merits of the objection, including, if necessary, a privilege log. (Code Civ. Proc., § 2031.240, subd. (c)(1), *Riddell, Inc. v. Superior Court* (2017) 14 Cal.App.5th 755, 772.)

If a document is withheld based on the privilege objection, the privilege log should include the following information for each document withheld: (1) the privilege or exemption claimed; (2) the type of document withheld (letter, memo, contract, etc.); (3) a brief description of the document's contents or subject matter that is sufficient to determine whether the privilege applies; (4) the date of its creation or transmittal, (5) the identity and capacity of the author and anyone who sent, received, or viewed the document; and (6) its Bates stamp or similar number. (*Wells Fargo Bank v. Superior Court* (2000) 22 Cal.4th 201, 205.) If the responding party properly objects to a discovery request but then provides an inadequate or untimely privilege log, or no log at all, the court can impose sanctions or order the party to serve a supplemental privilege log. (*Catalina Island Yacht Club v. Superior Court of Orange County* (2015) 242 Cal.App.4th 1116, 1127-28.)

Be cautious not to disclose too much information about the document when drafting a privilege log as that may waive the claimed privilege.

Requests for admission

Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting to rest a triable issue so that it will not have to be tried. Therefore, the fact that the request is for the admission of a controversial matter, or one involving complex facts, or calls for an opinion, is of no moment. If the responding party is able to make the admission, the time for making it is during discovery procedures, and not at the trial. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429.)

A party can respond to requests for admission by providing an answer or by objecting to the request.

Answering requests for admission

Each answer to a request for admission must be as complete and straightforward as the information reasonably available to the responding party allows. (Code Civ. Proc., § 2033.220, subd. (a).)

A party can answer a request for admission by (1) admitting the truth of the request; (2) denying the truth of the request; or (3) asserting a lack of sufficient information or knowledge about the matter involved in the request. (Code Civ. Proc., § 2033.220, subd. (b).) Additionally, you may include reasonable explanations and qualifications in your response. (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 780-81.)

The responding party must admit any part of the matter involved in the request that is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party. (Code Civ. Proc., § 2033.220, subd. (b)(1).) Any matter admitted is conclusively established against the responding party and is binding on that party for purposes of the pending case. (Code Civ. Proc., § 2033.410.)

Conversely, the responding party must deny any part of the matter involved in the request that is untrue. (Code Civ. Proc., § 2033.220(b)(2).)

Another option is the responding party can state that they lack sufficient information or knowledge to admit or deny any part of the matter involved in the request. (Code Civ. Proc., § 2033.220, subd. (b)(3).) However, if this response is used, the response must state that the responding party made a reasonable inquiry about the matter in the request and is unable to admit or deny based on the information known or readily obtainable by the party. (Code Civ. Proc., § 2033.220, subd. (c).)

Because requests for admission are not limited to things within a party's personal knowledge, the responding party must make a reasonable investigation of the facts before denying that it has sufficient knowledge to answer. (*Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529.)

Objecting to requests for admission

A party can respond to requests for admission by objecting in writing; however, the responding party must state the specific grounds for the objection. (Code Civ. Proc., § 2033.230, subd. (b).)

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Further, the responding party can object to all of the request or only part of it. If the responding party objects to only part of the request, they must provide a code-compliant answer to the rest of the request. (Code Civ. Proc., 2 033.230, subd. (a).)

Requests for admissions can ask the responding party to admit the truth of a specific fact and they can ask the responding party to admit the truth of the responding party's opinion relating to specific facts. (Code Civ. Proc., § 2033.010.) Requests for admission can even ask the responding party to admit the truth of the application of law to specific facts. (*Grace v. Mansourian* (2015) 240 Cal. App.4th 523, 529.) Therefore, when a party is served with a request for admission concerning a legal question properly raised in the pleadings, they cannot object simply by asserting that the request calls for a conclusion of law. (*Burke v. Sup. Ct.* (1969) 71 Cal.2d 276, 282.)

Conclusion

While not all opposing counsel will serve you with a meet and confer letter based on the construction of your responses, drafting your responses in compliance with the rules will cover you regardless of who is reviewing your responses.

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