



**Katherine Gallo, Esq.**  
**Discovery Referee, Special Master, and Mediator**  
**1-650-571-1011**

## **INSPECTION DEMANDS-What is a Reasonable Inquiry?**

**By Katherine Gallo**

To determine whether or not a responding party has made a *reasonable inquiry*, you must determine where the responding party searched (what efforts were made), who did they talk to (did they make an inquiry to their legal department, human resources, customer relations, the employees in the chain of command, etc.), and what were the questions they asked.

More often than not I see responses to document requests being done (1) by the one with the highest bar number on the pleading (a.k.a. the newbie associate) and/or (2) by the attorney dictating at their desk instead of taking the time to sit down with the client, determining whom they should be talking to and knowing what questions to ask.

It is my opinion that the person who should be talking to the client and collecting the documents is the experienced senior attorney who has a relationship with the client and knows what questions to ask. If the senior attorney still chooses to delegate, then they need to be “hands on” and take responsibility whether or not a “diligent search” and “*reasonable inquiry*” were in fact made prior to the response and production being served.

If a motion to compel further responses comes before me based on the response:

After a *diligent search* and a *reasonable inquiry* has been made in an effort to comply with this Request, there are no documents within RESPONDING PARTY’s possession, custody, or control

I am going to be asking the responding party for a declaration from the client and/or attorney as to what exactly was done, who was contacted and what questions were asked. What I have found, more times than not, is that the parties have not done a “*diligent search*” and/or made a “*reasonable inquiry*.”

It is important that attorneys recognize that the obligations in responding to inspection demands and collecting documents cannot be ignored. The courts are more than ever issuing severe monetary, issue and evidence sanctions for failure to comply. The most recent being *Kayne v. Superior Court* (2011) 198 CA4th 1470 . Therefore, in responding to an inspection demand and collecting documents you need to do the following:

**969G Edgewater Blvd., Suite 345 Foster City, CA 94404**  
**phone: (650)571-1011 fax: (650)571-0793 [klgallo@discoveryreferee.com](mailto:klgallo@discoveryreferee.com)**



**Katherine Gallo, Esq.**  
**Discovery Referee, Special Master, and Mediator**  
**1-650-571-1011**

**FIRST**, you need to figure out what questions you should be asking your client and what documents you need from your client. To determine that you need to know your case and that includes:

- Each party's theories
- Potential causes of action that were not pleaded but might be included in an amended complaint
- Affirmative defenses
- Review of jury instructions

**SECOND**, you need to identify the corporate structure to determine whom you should be talking to and whether or not they did an investigation. These people include:

- In-house counsel
- Risk manager
- Human resources
- Chains of command regarding reporting obligations.

**THIRD**, you need to identify key witnesses with information relevant to the subject matter of the dispute. These witnesses include:

- People whose names appear in the narrative portion of a complaint.
- People whose names appear on documents.
- People named in interrogatory responses.
- People identified in depositions.
- People identified by in-house counsel.
- People identified by internal or insurance company investigations.

**FOURTH**, you are going to need to determine where the client has their documents as well as third parties whom the client has custody and control over (i.e., insurance brokers, banks, former employees etc.) keeps their documents and/or electronically stored information. This inquiry starts with determining whether the documents are in paper files, they are electronically stored information (ESI) or a combination thereof.



**Katherine Gallo, Esq.**  
**Discovery Referee, Special Master, and Mediator**  
**1-650-571-1011**

**Paper Files**

- Where are the primary file cabinets?
- Would any employee or third party have copies?
- Are any of the documents stored off site?
- Have any of the documents been destroyed?

**Electronically Stored Information (ESI)**

- Where are the primary electronically stored files kept (i.e., stand-alone computers, servers, the cloud)?
- Is the information on any portable storage media such as thumb-drives CD-ROM, portable backup drives?
- Is the information on anyone's personal laptops, home computers, tablets, smart phones?
- Has any of the ESI been erased, overwritten or destroyed?

**FINALLY**, you are going to need to determine the client's data retention and litigation hold policies. Also, do they have a criterion in place as to what documents get systematically destroyed due to age and other reasons.

Though the above is not an all-inclusive list, it is a good starting point. I would also recommend that you review titled *California E-Discovery and Evidence* (Matthew Bender Practice Guide (2010)) Section 9 titled Gathering and Producing Electronically Stored Information.

**WORDS OF WISDOM:**

In *Qualcomm v. Broadcom* (United States District Court, Southern District of California, Case # 05cv1958-B), United States Magistrate Judge Barbara L. Major stated in Footnote 10 of her January 7, 2008 ruling that:

"If [the associate attorney] was unable to get Qualcomm to conduct the type of search he deemed necessary to verify the adequacy of the document search and production then he should have obtained the assistance of the supervising or senior attorneys. If [they] were unable to get Qualcomm to conduct a competent and thorough document search, they should have withdrawn from the case or taken other action to ensure production of the evidence."

**969G Edgewater Blvd., Suite 345 Foster City, CA 94404**  
**phone: (650)571-1011 fax: (650)571-0793 [klgallo@discoveryreferee.com](mailto:klgallo@discoveryreferee.com)**