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Interrogatories--You have An Obligation to Respond in Good Faith

By Katherine Gallo

Imagine this: At the beginning of the case you serve interrogatories asking basic information about your case. Thirty-five (35) days later you receive responses that state for every interrogatory:

> "Vague, ambiguous, overbroad, burdensome, oppressive, not likely to lead to admissible evidence and the information is equally accessible to the defendant. Plaintiff further objects on the grounds of attorney client privilege and the work product doctrine." See Nacht & Lewis Architect, Inc. v. Superior Court (1996) 47 CA4th 214 (pdf).

Does this sound all too familiar? The frustration level is high with attorneys as it will take at a minimum 121 days to get basic information if you have to file a motion to compel further responses. Meanwhile the court is scheduling a trial date and your discovery train hasn't even left the station.

The purpose of discovery is to take the "*game*" element out of trial preparation by enabling the parties to obtain evidence necessary to evaluate and resolve their dispute before a trial is necessary. Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2009) ¶ 8:1, citing *Greyhound Corp. v. Superior Court* (1961). Unfortunately, now it appears the call of the wild is "*Let the games begin*" as the dreaded process unfolds.

It is time to rethink how you respond to interrogatories and what you can do if you do get the above response. Code of Civil Procedure §2030.220 requires that

(a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.

(b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible.

(c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

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The code requires that a party must make a reasonable and good faith effort to obtain the information. Regency Health Services, Inc. v. Superior Court (1998) 64 CA4th1496 (pdf)"A party cannot plead ignorance to information which can be obtained from sources under his control." *Deyo v. Kilbourne* (1978) 84 CA3d 771,782. This includes a party's lawyer Smith *v. Sup. Ct (Alfred)* (1961) 189 CA 2d 6, agents or employees *Gordon v. Sup. Ct. (U.Z.MFG.Co)* (1984) 161 CA 3d 15,167-168, family members *Jones v. Superior Court (Benny)* (1981) 119 CA 3d 534, 552 and experts who have been retained by a party and designated as a trial witness. *Sigerseth v. Superior Court*(1972) 23 CA 3d 427,433. See Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2009) ¶ 8:1051-1060 This means that you can't just pawn off the responses to your client or spend an hour and dictate off the top of your head and then answer "inability to respond." See Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants (2007) 148 CA4th 390 The statute and the case law make it very clear that a party and the attorney must be proactive in obtaining the information to respond to the interrogatories.

Discovery motions are by no means the Courts' favorite motions to hear and, unfortunately, they have seen the above interrogatory response too many times. So don't be surprised if you get sanctioned for providing false or evasive answers. *See CCP §2030.300*

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