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QUOTING SHAKESPEARE

By Katherine Gallo

Last spring I had the pleasure of taking a tour of the Royal Globe Theatre in London, England. On display there was a plaque titled "**Quoting Shakespeare**." It began by stating:

> **IF YOU CANNOT UNDERSTAND MY ARGUMENT AND DECLARE,** "*it's Greek to me*, you are quoting Shakespeare. If you claim to be *more sinned against than sinning*, you are quoting Shakespeare. If you act *more in sorrow than in anger*, if *your wish is father to the thought*, if you lost property *has vanished into thin air*, you are quoting Shakespeare. If you have ever refused *to budge an inch* or suffered from *green-eyed jealousy*, if you have *played fast and loose*, if you have been *tongue-tied-a tower of strength—hoodwinked* or *in a pickle*, if you have *knitted your brows—made a virtue necessitated*, insisted on *fair play, slept not one wink—stood on ceremony—danced attendance* on your lord and mater—laughed yourself into stitches, had *short shrift—cold comfort, too much of a good thing*, if you have *seen better days*, or lived *in a fools paradise*, why, be that as it may, *the more fool you*, for it is a *foregone conclusion* that you are as good luck would have it, quoting Shakespeare…

It brought a smile to my face when I read the passage as I realized how much of Shakespeare is in our everyday vernacular. There to I realized how many distinctive quotes there that I use over and over again as a Discovery Referee. Here are a few that you should keep handy to sprinkle into your arguments during your discovery battles.

PHILOSOPHY OF DISCOVERY

The overriding philosophy of the Discovery Act is that discovery should be liberally construed in order 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 2011) ¶8:1, citing *Greyhound Corp. v. Sup. Ct.* (1961) 56 C2d 355

Any doubt is generally resolved in favor of permitting discovery, particularly where the precise issues in the case are not yet clearly established. Weil and Brown, Cal Prac. Guide: Civil Procedure Before Trial (TRG 2011) ¶8:71 citing *Colonial Life & Accident Insurance Co. v. Sup. Ct.* (1982) 31 C3d 785, 790.

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"Relevant to the subject matter" is broader than relevancy to the issues which determines admissibility of evidence at trial. Weil and Brown, Cal Prac. Guide: Civil Procedure Before Trial (TRG 2011) ¶8:66 citing *Bridgestone-Firestone Inc. v. Sup. Ct.* (1992) 7 CA4th 1384, 1392.

Admissibility at trial is not the test for relevancy. See *Davies v. Sup. Ct.* (1984) 36 C3d 291, 301.

There is no priority in discovery. C.C.P. §2019.210.

Fishing trips are permissible *Greyhound Corp. v. Sup. Ct.* (1961) 56 C2d 355, 383-385, just be prepared to state what you are fishing for.

The scope of permissible discovery is one of reason, logic and common sense. Weil and Brown, Cal Prac. Guide: Civil Procedure Before Trial (TRG 2011) ¶ 8:67 citing *Lipton v. Sup. Ct.* (1996) 48 CA4th 1499, 1611

DISCOVERY PROPOUNDED

The Fourth District Court of Appeal defined "reasonable particularity" in requests for production of documents to mean that they are "reasonably particularized from the standpoint of the party on whom the demand is made." *Calcor Space Facility, Inc. v. Sup. Ct.* (1997) 53 CA4th 216, 222.

Any party may obtain discovery ... by a written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties. C.C.P. §2033.010.

RESPONDING TO DISCOVERY

The code requires that a party must make a reasonable and good faith effort to obtain the information. *Regency Health Services, Inc. v. Sup. Ct.* (1998) 64 CA4th 1496. "A party cannot plead ignorance to information which can be obtained from sources under his control." Deyo v. Kilbourne (1978) 84 CA 3d 771, 782. This includes a party's lawyer *Smith v. Sup. Ct.* (1961) 189 CA2d 6, agents or employees *Gordon v. Superior Court* (1984) 161 CA 3d 151, 167-168, family members *Jones v. Sup. Ct.* (1981) 119 CA 3d 534, 552 and experts. *Sigerseth v. Sup. Ct.* (1972) 23 CA 3d 427, 433. See Weil and Brown, Cal Prac. Guide: Civil Procedure Before Trial (TRG 2009) ¶ 8:1051-1060

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OBJECTING TO DISCOVERY

"Burdensome and Oppressive" The showing required to sustain this objection is that the intent of the party was to create an unreasonable burden, or that burden created does not weigh equally with what requesting party is trying to obtain from it. See *Mead Reinsurance Co. v. Sup. Ct*. (1986) CA3d 313. In the *Mead* case, the objecting party showed that it would require the review of over 13,000 claims files requiring five claims adjusters working full time for six weeks.

"Right of Privacy" "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." *Article I, Section 1 of the California Constitution*.

"Information equally available to asking party" The only time this objection works is if a party has to go get public records Bunnell v. Sup. Ct. (1967) CA2d 720, 723-724 or interview independent witnesses Holguin v. Sup Ct. (1972) 22 CA3d 812, 821 in order to answer the questions.

Referencing Documents: It is improper to answer "See Complaint" or "See deposition". If the question requires reference to some other document, then the document should be identified and its contents summarized so that the answer by itself is fully responsive to the interrogatory. Weil and Brown Civil Procedure Before Trial (TRG 2011) §8:1049 citing *Deyo v. Kilbourne* (1978) 84 CA 3d 771. The exception to this is C.C.P. §2030.230 where the code allows the answering party to allow the interrogating party to inspect the files and records. However, the answering party must show: (1) a compilation, abstract, audit or summary of its records is necessary in order to answer the interrogatory; and (2) no such compilation etc. exists; and (3) the burden or expense of preparing or making it would be substantially the same for the asking party as it would for the answering party.

MOTIONS

Motions to compel further responses to interrogatories, requests for productions of documents and requests for admissions require that the motion be filed within 45 days. CCP §§ 2030.300(c), 2031.310(c) and 2032.290(c). Delaying the filing of the motion waives a party's right to compel further responses. The case of *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal. App. 3d 681, 685 takes the position that the court lacks jurisdiction to order further responses after time has expired. The Second District Court of Appeal upheld this rationale in Sexton v. Superior Court (1987) 58 Cal. App. 4th 1403, 1410.

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SANCTIONS

Discovery sanctions are not reported to the State Bar. See Bus. & Prof. Code. §6068(o)(3).

Discovery sanctions are not a windfall. They are to compensate for costs and fees incurred by the party in enforcing discovery or defending a meritless motion. See Weil and Brown, California Practice Guide: Civil Procedure Before Trial (TRG 2011) ¶8:1213 citing *Caryl Richards, Inc. v. Sup. Ct.* (1961) CA2d 300, 303.

In imposing issue and evidence sanctions, the court must tailor the sanction to fit the conduct. *McArthur v. Bockman* (1989) 208 Cal. App. 3d 1076, 1080-1081. The aggrieved party cannot receive more by way of a sanction then it would have received if it had received the discovery. *Rail Services of America v. State Comp. Insurance Fund* (2003) 110 Cal App. 4th 323, 332.

The "trial court is not required to make findings at all" in granting any discovery sanctions, including terminating sanctions. See Weil and Brown, California Practice Guide: Civil Procedure Before Trial (TRG 2011) ¶8:1241.5 citing *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 CA 4th 256, 261.

BE FORWARNED OF A COURT'S IRE

"Twenty-three years ago, the Legislature enacted the Civil Discovery Act of 1986 . . . a comprehensive revision of pretrial discovery statutes, the central precept of which is that **civil discovery be essentially self-executing**. More than 10 years ago, *Townsend v. Superior Court* (1998) 61 CA 4th 1431 lamented the all too often interjection of "**ego and emotions of counsel and client[s]**" into discovery disputes, warning that "[**l]ike Hotspur on the field of battle, counsel can become blinded by the combative nature of the proceeding and be rendered incapable of informally resolving a disagreement**." (*Townsend* at 1436.) Townsend counseled that the "informal resolution" of discovery disputes "entails something more than bickering with [opposing counsel]." (*Townsend* at 1439) Rather, the statute "requires that there be a serious effort at negotiation and informal resolution." (*Townsend* at 1438.)" *Clement v. Alegre (2009)* 177 CA4th 1277.

DO YOU HAVE ANY FAVORITE QUOTES YOU WOULD LIKE TO SHARE?

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