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## **Am I Naïve to Think Something Should Be Done?**

**By Katherine Gallo**

Last week I received the following e-mail from one of my readers:

*I have read your articles with interest and respect for some time now; I find them excellent plus.*

*I have a friend who is acting pro per in a civil case. Suffice it to say she can't afford or get an attorney.*

*Opposing counsel has made a mockery of discovery by making (putrid) garbage objections to 99% of discovery sent him. He uses every boilerplate objection and has even objected saying some discovery was "unintelligible" when my friend didn't define a name that was the name of the defendants product...*



*Opposing counsel is clearly abusing the intent of discovery dragging my friend into "Meet and Confer Hell" while knowing that as a pro per, my friend can not get anything more at this point than her costs of filing a Motion to Compel (which she has won) and photocopy costs. On the other hand, and I speak with authority, opposing counsel has created enough work for himself to literally turn a reasonably moderately sized case into a major matter and I would estimate he has made more than \$250,000 in fees from his client (no insurance company involved) in 2011.*

*My point being: There is clearly a wrong here (major discovery abuse and a lack of any good faith) and no remedy.*

*Am I being naive in thinking something should be done or a remedy created?*

This is a common problem for pro pers as well as parties who don't have a lot of money. It looks hopeless as you are being out muscled by a party who has deep pockets and a lawyer who's intent is to abuse the discovery process and run up his bills.

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So what can you do? **GET THE COURT INVOLVED!!**

You need to file a motion to compel further responses requesting a protective order pursuant to C.C.P. §§ 2025.420, 2030.090, 2031.060, and/or 2033.080 and an award of monetary, issue and evidence sanctions.

**TELL THE COURT:**

1. The facts of the case in detail, including the procedural history of the case.
2. The discovery you are attempting to get.
3. The garbage objections you are receiving.
4. The futility of the meet and confer process.
5. Your good faith responses to opposing party's discovery.
6. All Motion for Summary Judgment/Summary Adjudication, arbitration, mediation and/or trial dates.

**ASK THE COURT TO:**

1. Stay all discovery propounded by opposing party until your discovery is complied with.
2. Impose deadlines for discovery responses with a return date to the court to show compliance.
3. Implement a discovery plan and to oversee all future discovery.
4. Rule that all depositions are to be held at the courthouse with the judge available to rule on all objections.
5. Appoint a Discovery Referee with the opposing party to pay for the vast majority of the referee's fees.
6. Award sanctions pursuant to C.C.P. §177.5 —up to \$1500 in sanctions payable to the court for violation of court order.
7. Award issue and evidence sanctions.
8. Schedule an early settlement conference.

**REMEMBER: You need to be pro active. You can't sit back and hope that justice will prevail.**

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