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## **What Should Your Discovery Motions Look Like?**

**By Katherine Gallo**

Discovery motions are the banes of most attorneys' existence and they are often relegated to the newbie in the office to prepare. Young associates as well as other attorneys struggle on what needs to be in the papers and exactly how to convince the court that they should win.

With the courts' having budgetary problems and staff shortages, it is in your best interests to make it real clear to the court (1) what has happened; (2) what you want the court to do; and (3) why you are entitled to the discovery and sanctions in a succinct fashion.

The practice guides--Weil and Brown, Civil Procedure Before Trial (TRG), CEB California Civil Discovery Practice (2010) 4<sup>th</sup> Ed and Matthew Bender Practice Guide: California Civil Discovery-- are good starting points in preparing your motion. There also are numerous seminars on law and motion practice which I encourage you to attend. To get an idea on what a judge likes and dislikes, go to the website of legal newspapers and magazines to see if there has been an interview of your particular judge.

Yet, you still may be unsure as to what the meat and potatoes of the motion should look like. After two years in the law and motion department in Alameda County Superior Court and sixteen years as a private Discovery Referee, I can tell you what I like and you can take whatever pearls and nuggets you find from there.

### **Meet and Confer Letter:**

1. This is a very important document. It sets the tone of your dispute with opposing counsel so don't be hostile. Remember this letter is going to be an exhibit to your motion and could make or break your request for [sanctions](#) if the court finds that you have not been professional.
2. List every interrogatory, request and/or deposition question separately and explain why the [objections are garbage](#) and why you are entitled to discover the information. You can later take your arguments in this letter and drop it into your [Separate Statement of Items in Dispute \(pdf\)](#) saving you much needed time.

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**Notice:**

1. The Notice is not wasted space. The notice is to tell the court and opposing party not only the name, date, time and location of the motion, but the “nature of the order sought” as well. So make sure you state the exact remedy you’re seeking in detail. Also, make sure to list the nature and title of all documents to be attached.
2. If you are seeking sanctions it must be in the Notice.
3. List the nature and title of all documents that will be attached (i.e., Memorandum of Points and authorities, declarations, etc.)
4. Make sure you comply with [CRC 3.1110 \(pdf\)](#).

**Points and Authorities**

1. Give a good explanation of the facts of the case. The relevant scope of your discovery depends on these facts. Don’t assume the court remembers your case as they handle anywhere from 75 to 100 cases a week.
2. Provide a procedural history of the discovery motion in a time line laid out like the one below:
  - o 6/1/10 Served interrogatories via mail (Exhibit A)
  - o 6/28/10 Counsel asked for an extension via telephone call (Declaration)
  - o 7/30/10 Received responses full of objections (Exhibit B)
  - o 8/5/10 Meet and confer letter sent (Exhibit C)
  - o 8/25/10 Response to meet and confer letter (Exhibit D)
3. State your arguments why you are entitled to your discovery. Categorize your arguments (i.e., “Special Interrogatories #1, 7, 15 are asking for information regarding . . .”) Apply the facts and the law accurately. [Point out the obligation to respond in good faith](#). Point out the [garbage objections](#). Point out that the failure to provide proper responses has delayed your case. If the motion requires a [Separate Statement of Items in Dispute \(pdf\)](#) as required by [CRC 3.1345 \(pdf\)](#), then make specific arguments to the specific interrogatories, requests or deposition questions in that document.

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4. State your request for [sanctions](#) in detail.
5. Detail the exact relief you are requesting: (i.e., "Plaintiff to serve verified responses to interrogatories 1, 2, 3, 4 by 11/1/2010 and attorneys' fees in the amount of \$2200 and costs in the amount of \$40.")
6. Make sure you comply with [CRC 3.1113 \(pdf\)](#).

#### **Separate Statement of Items in Dispute**

1. This is the most important document of your motion and the first document that a court will rely on. Do your real argument here. Be detailed in the law as to why the objections are garbage. Apply the facts of your case to show why the information you are seeking is discoverable.
2. Make sure you comply with [CRC 3.1345 \(pdf\)](#)

#### **Declaration:**

1. Authenticate all your exhibits.
2. Describe your meet and confer with opposing counsel.
3. If there is a request for [sanctions](#), state your hourly rate. Outline in detail the time spent on the motion and any future time you anticipate spending. Calculate the attorneys' fees and add the costs.

#### **Proposed Order:**

1. Have the order state which interrogatory, request and/or deposition question have been granted and the date line as to when that verified response is to be served or the deposition needs to take place by (i.e., "Verified answers to Special Interrogatories, Set #1, #1, 2, 5, 7, 13 are to be served no later than \_\_\_\_."). This allows the court to strike the numbered interrogatory, request and/or deposition question that has been denied and to put in their own compliance date.
2. Do the same thing for [sanctions](#). List the award of attorneys' fees and the award for costs. State who the award is against by name.

#### **Other Helpful Hints:**

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1. Do not go over the 15 page limit without obtaining a court order. [CRC 3.1113 \(pdf\)\(e\)](#)
2. Do not use smaller fonts. [CRC 2.104 \(pdf\)](#) and [CRC 2.105 \(pdf\)](#)
3. Though [CRC 2.08 \(pdf\)](#) allows for 1.5 line spacing, double space is preferred.
4. Understand the procedural rules for Judicial Notice and their effect on your motion. See [Ev. C §451 \(pdf\)](#), [Ev. C §452 \(pdf\)](#), [CRC 3.1113 \(pdf\)\(l\)](#).
5. You must do a table of contents and table of authorities if the motion is 10 pages or over. [CRC 3.1113 \(pdf\)\(f\)](#) However, many judges appreciate a table of contents in any motion.
6. If you are bringing a motion to compel answers to special interrogatories or requests for admissions that are over the initial 35 allowed, then make sure and attach your "*Declaration of Necessity*."
7. If a department wants courtesy copies, make sure you get a full set to the department in a timely fashion.
8. Most importantly **PROTECT YOUR REPUTATION**. Be accurate in your citation of the facts as well as the law. Do not overreach. Do not try and be clever. Do not show disrespect to opposing counsel or their client. The research staff as well as the judges will remember you.