



California State Courts Complicit in Civil Discovery Abuses.

James D. Crosby, Attorney at Law | March 25, 2011 at 9:28 pm | Categories: Uncategorized | URL: <http://wp.me/p1agtp-2y>

In the idealized world of self-executing civil discovery, disputes should be rare. They should be worked out by reasonable counsel without the courts. But that is not the world of aggressive modern day business litigation. Discovery is not just a means to secure information and narrow issues. For some litigants, it has become a strategic tool to delay cases, frustrate opponents and drive up costs. Civil litigators publicly decry these abuses, but candidly acknowledge them as, increasingly, a regular part of civil practice. And through no fault of their own, California state courts are becoming complicit in these discovery abuses.

Due to overcrowded civil calendars, discovery motions are being calendared months out. This substantially delays resolution of discovery disputes. In San Diego, where I have a business litigation practice, discovery motions are being calendared as much as three months out by civil departments. In California, cases are supposed to be tried within one year. Summary judgment motions require 75 days' notice. So, a three month delay in resolving a dispute over a document request is significant. And such delays lead to tactically-driven discovery abuses.

The calculation is clear and, in a tactical sense, compelling. If delaying a deposition for several months will disrupt the opponent's discovery plan and trial preparation, why not file a motion for protective order? Or object and force a motion? In significant cases, even the risk of discovery sanctions may not discourage such actions. The cold calculation is clear: what's a few thousand dollars in sanctions and some harsh words from a judge if one can significantly disrupt an opponent's case? Cynical, yes. Improper, yes. Unethical, maybe. Is this the custom and practice of most trial lawyers? No. But, effective as a tactic? Most likely, yes.

The solution? Obviously, more judges and more civil trial departments. But, come on, is that going to happen any time soon? Other possible solutions - give more calendar priority to discovery motions, decrease the statutory notice for such motions, streamline briefing requirements or set up separate civil departments to expeditiously address only discovery motions.

Until something is done to expedite discovery motions heard in California courts, those same courts will remain complicit, though innocently so, in the very discovery abuses they are supposed to guard against.

I welcome your comments.