



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

ALL ANSWERS REMAIN THE SAME

By Katherine Gallo



DILEMMA: It is 30 days before trial and you get the final responses to your propounded discovery. In reviewing responding party's answers to supplemental interrogatories the verified response says: "Responding party states that all answers to Interrogatories, Set No. One, that were previously served in this action remain the same." Yet years have passed, records have been obtained, experts have been deposed and you know they're lying. What do you do?

The Discovery Act allows a party to serve a Supplemental interrogatory and a Supplemental demand at least three times:

- twice prior to any trial setting; and
- once after the initial trial setting and before the initial trial date

The act also allows that "for good cause shown" (i.e., trial continuance) the court may permit more supplemental interrogatories or supplemental demands. See C.C.P. §2030.070 and C.C.P. §2031.050

The burden is on the propounding party to obtain the updated information otherwise there is no continuing obligation of a responding party to update their responses. However, the reality of the matter is that these discovery devices are seldom used and the responding parties rarely take them seriously.

As a discovery referee, I see most parties use the supplemental interrogatory and demand as their last discovery device with the responses due exactly 30 days before trial.

More often than not the propounding party is saddled with the above

969G Edgewater Blvd., Suite 345 Foster City, CA 94404
phone: (650)571-1011 fax: (650)571-0793 e-mail: klgallo@discoveryreferee.com
Discovery Blog: www.resolvingdiscoverydisputes.com



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011

response with the trial date just weeks away leaving precious time to meet and confer in good faith and timely bring the motion. But the bottom line is, **YOU HAVE TO BRING THIS MOTION** or your proceeding to trial in the dark. Also, don't kid yourself, this going to be an ugly one. In order to win this motion you are going to have to point out to the court that opposing counsel (1) failed to make a reasonable and good faith effort to obtain the information; (2) only spent five minutes dictating "all answers remain the same"; (3) relied on three-year-old objections that are now garbage objections; and (4) is playing games with discovery for the sole purpose of hiding the ball and trying to skunk you at trial. Your motion is also going to be asking for, at a minimum, a continuance of the trial if not issue and evidence sanctions.

In order to avoid the above scenario, a party should use the supplemental interrogatories and demands in an efficient and effective manner. They should be sent at least once a year and no later than 90 days before trial. The responses you obtain should direct you on how to proceed with your discovery plan. If the responding party says they don't have any further information, then you need to solidify that point by either way of a motion to compel further responses, requests for admissions or motion in limine so no further information can be admitted at trial.

Moral of the Story: Supplemental interrogatories and supplemental demands are useful tools and they should definitely be in your bag of tricks. Just don't wait until the last minute to use them.

969G Edgewater Blvd., Suite 345 Foster City, CA 94404
phone: (650)571-1011 fax: (650)571-0793 e-mail: klgallo@discoveryreferee.com
Discovery Blog: www.resolvingdiscoverydisputes.com