

RESOLUTION 02-06-2011

DIGEST

Discovery: Deadline For Motion To Deem Requests For Admissions As Admitted

Amends Code of Civil Procedure section 2033.290 to extend the time to bring a motion to compel further responses to requests for admission and provides that such time begins to run after verified responses are received.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 2033.290 to extend the time to bring a motion to compel further responses to requests for admission and provides that such time begins to run after verified responses are received. This resolution should be approved in principle because it clarifies when the time begins running on the deadline for filing a motion to deem requests for admissions as being admitted.

This resolution's requirement that the time for filing a motion to compel begins running upon the receipt of verified responses codifies the well-established holding in *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636, that an unverified response to requests for admissions is tantamount to no response at all. Presently, Code of Civil Procedure section 2033.290 provides that a party must bring a motion to compel further responses within "45 days of the service of the response." Parties routinely provide discovery responses noting that the verification of the actual responses will follow. This creates ambiguity under the existing statute, as it is unclear whether a motion to compel must be brought within 45 days of receipt of the unverified responses, or if it can be brought later when the verification is received. Although an unverified discovery response is tantamount to no response at all (see *Appleton*, 206 Cal.App.3d at p. 636), the current statute is ambiguous as to when this time period begins. (*Standon Co., Inc. v. Superior Court* (1990) 225 Cal.App.3d 898, 903.)

In addition, increasing the time period in which to bring a motion to compel from 45 to 60 days is appropriate, as counsel are required to complete an extensive meet and confer process prior to bringing a motion to compel. (Code Civ. Proc., § 2016.040.) Extending this time period ensures that an appropriately exhaustive meet and confer process can take place, in a time period identical to compelling other types of discovery.

This resolution is related to Resolutions 02-08-2011 and 02-09-2011.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2033.290 to read as follows:

1 § 2033.290

2 (a) On receipt of a response to requests for admissions, the party requesting admissions
3 may move for an order compelling a further response if that party deems that either or both of the
4 following apply:

5 (1) An answer to a particular request is evasive or incomplete.

6 (2) An objection to a particular request is without merit or too general.

7 (b) A motion under subdivision (a) shall be accompanied by a meet and confer
8 declaration under Section 2016.040.

9 (c) Unless notice of this motion is given within ~~45~~ 60 days of the service of the verified
10 response, or any supplemental verified response, or any specific later date to which the
11 requesting party and the responding party have agreed in writing, the requesting party waives
12 any right to compel further response to the requests for admission.

13 (d) The court shall impose a monetary sanction under Chapter 7 (commencing with
14 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a
15 motion to compel further response, unless it finds that the one subject to the sanction acted with
16 substantial justification or that other circumstances make the imposition of the sanction unjust.

17 (e) If a party then fails to obey an order compelling further response to requests for
18 admission, the court may order that the matters involved in the requests be deemed admitted. In
19 lieu of or in addition to this order, the court may impose a monetary sanction under Chapter 7
20 (commencing with Section 2023.010).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Under existing law, a party waives the right to compel further responses to requests for admissions if a motion to compel is not filed within 45 days of the service of responses to requests for admissions.

This Resolution: This resolution will expand the 45-day period to 60 days and specify that the period will not begin to run until verified responses are served.

The Problem: It is common practice for parties to serve unverified responses to requests for admissions with a promise to provide verifications “as soon as possible.” Currently, it is not clear whether a propounding party is at risk of losing his right to compel further responses if he chooses to wait for promised verifications. Because an unsworn response is tantamount to no response at all (see, *Appelton v. Superior Court*, 206 Cal. Ap.. 3d 632, 636), it should be clear that the time for a motion to compel does not begin to run until the requests for admissions have been verified.

In addition, the 45-day period was established before the current trend of courts requiring extensive meet-and-confer. Because a party can easily create mischief during the meet-and-confer process by engaging in dilatory conduct, the extra time is warranted.

In addition, this resolution will bring the motion-to-compel time frame in line with the time-frame for bringing a motion to compel answers or production of documents post-deposition. (Code Civ. Proc., § 2025.480.) The 60-day time-frame has not proved problematic in the context of compelling deposition responses and it is thus unlikely to prove problematic if applied to requests for admissions.

In summary, this resolution will help decrease abuses of the discovery process.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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Resolution 02-06-11 - Deadline For Motion To Compel Further Responses to Requests For Admission

The State Bar of California's Committee on Administration of Justice RECOMMENDATION: DISAPPROVE

The State Bar's Committee on Administration of Justice (CAJ) believes the current 45-day period is sufficient, and generally provides enough time to review a response and file a motion to compel, if needed. Moreover, the statute specifically provides that the parties can agree to extend the date, and that is often the result when the parties are engaged in the meet-and-confer process. CAJ does not see a benefit to extending the period from 45 to 60 days.

Disclaimer

This position is only that of the State Bar of California's Committee on Administration of Justice. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.