

## RESOLUTION 02-09-2011

### DIGEST

#### Enlarging Time to Compel Further Responses to Interrogatories

Amends Code of Civil Procedure section 2031.300 to extend the time to bring a motion to compel further responses to interrogatories and provide that such time begins after verified responses are received.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

Similar to Resolution 01-06-2003, which was approved in principle.

#### Reasons:

This resolution amends Code of Civil Procedure section 2031.310 to extend the time to bring a motion to compel further responses to interrogatories and provide that such time begins after verified responses are received. This resolution should be approved in principle because it clarifies that the time to file a motion to compel further responses does not start until verified responses are received, and because the extension of time to respond is appropriate given the extensive meet and confer requirements.

Presently, Code of Civil Procedure section 2031.300, subdivision (c) 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 *Appelton v. Superior Court* (1988) 206 Cal.App.3d 632, 636), the current statute remains unclear as to when this time period begins. (*Standon Co., Inc. v. Superior Court* (1990) 225 Cal.App.3d 898, 903).

It is important that the time period in which to bring a motion to compel be clearly established, because if a party fails to bring this motion within the requisite time, that party waives the right to compel any responses to the demand. (Code Civ. Proc., § 2031.300, subd. (c); *Sperber v. Robinson* (1994) 26 Cal.App.4th 736, 741). Moreover, this time limit is jurisdictional, such that a court has no authority to grant a late motion, regardless of the circumstances. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

Furthermore, an increase in 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.) The extension of 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 02-06-2011 and 02-08-2011.

## TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2030.300 to read as follows:

- 1 § 2030.300  
2 (a) On receipt of a response to interrogatories, the propounding party may move for an  
3 order compelling a further response if the propounding party deems that any of the following  
4 apply:  
5 (1) An answer to a particular interrogatory is evasive or incomplete.  
6 (2) An exercise of the option to produce documents under Section 2030.230 is  
7 unwarranted or the required specification of those documents is inadequate.  
8 (3) An objection to an interrogatory is without merit or too general.  
9 (b) A motion under subdivision (a) shall be accompanied by a meet and confer  
10 declaration under Section 2016.040.  
11 (c) Unless notice of this motion is given within 45 ~~60~~ days of the service of the verified  
12 response, or any supplemental verified response, or on or before any specific later date to which  
13 the propounding party and the responding party have agreed in writing, the propounding party  
14 waives any right to compel a further response to the interrogatories.  
15 (d) The court shall impose a monetary sanction under Chapter 7 (commencing with  
16 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a  
17 motion to compel a further response to interrogatories, unless it finds that the one subject to the  
18 sanction acted with substantial justification or that other circumstances make the imposition of  
19 the sanction unjust.  
20 (e) If a party then fails to obey an order compelling further response to interrogatories,  
21 the court may make those orders that are just, including the imposition of an issue sanction, an  
22 evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section  
23 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction  
24 under Chapter 7 (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 interrogatories if a motion to compel is not filed within 45 days of the service of responses to interrogatories.

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 interrogatories 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* (1988) 206 Cal.App.3d 632, 636), it should be clear that the time for a motion to compel does not begin to run until the interrogatories 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 interrogatories post-deposition. Cal. 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 interrogatories.

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.

**AUTHOR AND PERMANENT CONTACT:** Lilys D. McCoy, McCoy, Turnage & Robertson, LLP, 5469 Kearny Villa Road, Suite 206, San Diego, California 92123, (858) 300-1900, (858) 300-1910(fax), ldm@mtrlaw.com.

**RESPONSIBLE FLOOR DELEGATE:** Lilys D. McCoy

---

Resolution 02-09-11 – Discovery: Deadline For Motion To Compel Further Responses to Interrogatories

#### **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.**