

RESOLUTION 06-09-2015

DIGEST

Civil Procedure: Supplemental Discovery Requests Not Tied to Initial Trial Setting Conference
Amends Code of Civil Procedure sections 2030.070 and 2031.050, to permit a party to propound supplemental discovery requests without regard for the date of the initial trial setting conference.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Code of Civil Procedure section 2030.070 and 2031.050 to read as follows:

§2030.070

1 (a) In addition to the number of interrogatories permitted by Sections 2030.030 and
2 2030.040, a party may propound a supplemental interrogatory to elicit any later acquired
3 information bearing on all answers previously made by any party in response to interrogatories.

4 (b) A party may propound a supplemental interrogatory ~~twice before the initial setting of~~
5 ~~a trial date, and, three times,~~ subject to the time limits on discovery proceedings and motions
6 provided in Chapter 8 (commencing with Section 2024.010), ~~once after the initial setting of a~~
7 ~~trial date.~~

8 (c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court
9 may grant leave to a party to propound an additional number of supplemental interrogatories.

10 §2031.050

11 (a) In addition to the demands for inspection, copying, testing, or sampling permitted by
12 this chapter, a party may propound a supplemental demand to inspect, copy, test, or sample any
13 later acquired or discovered documents, tangible things, land or other property, or electronically
14 stored information in the possession, custody, or control of the party on whom the demand is
15 made.
16

17 (b) A party may propound a supplemental demand for inspection, copying, testing, or
18 sampling ~~twice before the initial setting of a trial date, and three times,~~ subject to the time limits
19 on discovery proceedings and motions provided in Chapter 8 (commencing with Section
20 2024.010), ~~once after the initial setting of a trial date.~~

21 (c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court
22 may grant leave to a party to propound an additional number of supplemental demands for
23 inspection, copying, testing, or sampling.

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: The current statutes provide that you can propound supplemental interrogatories and inspection demands twice before the initial trial setting, and once thereafter. In some jurisdictions, trial setting conferences occur relatively early in the case, while discovery is underway. In other jurisdictions, trial is not set until shortly before the trial date. Parties would be able to request supplemental responses before key depositions and then once again before trial, regardless of when the trial setting conference occurs. Under the current statute, parties must reserve the post-setting supplemental request until shortly before trial. Depositions are often taken after the trial setting, but before the supplemental request should be made. This revision will allow the parties to choose when the supplemental discovery requests are served.

The Solution: This resolution permits supplemental requests without regard to trial setting, giving greater latitude to the parties to maximize their discovery efforts without resort to the Court to permit additional supplemental requests.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure sections 2030.070 and 2031.050, to permit a party to propound supplemental discovery requests without regard for the date of the initial trial setting conference. This resolution should be approved in principle, because it provides parties with the flexibility to propound supplemental interrogatories and inspection demands as needed without having to seek the court's permission to do so.

California does not require a party to supplement discovery responses or document production if new information comes to light. Instead, supplemental requests are the way for parties to obtain such information. Under the current statutes, a party may propound supplemental discovery requests twice before the trial date is set, and once after the trial date is set but before trial. In some counties, like San Francisco, the trial date is set early in the case, before the parties have conducted much discovery. While in others, the trial date is set shortly before the trial. Either way, the parties may not be able to avail themselves of the full number of supplemental interrogatories and requests for production, to their prejudice.

This resolution's solution permits parties to request supplemental responses as needed, without regard for trial setting, such as before key depositions and then once again before trial. Under the current statute, parties must reserve the post-trial setting supplemental request until shortly before trial. This revision will allow the parties greater flexibility in deciding when to use supplemental discovery requests, and make it possible for parties to use the full number of supplemental requests allowed by the Civil Discovery Act.

SECTION COMMENTS TO RESOLUTION 06-09-2015

STATE BAR OF CALIFORNIA'S COMMITTEE ON ADMINISTRATION OF JUSTICE

APPROVE

The State Bar's Committee on Administration of Justice (CAJ) agrees that parties should be permitted to propound three supplemental interrogatories and inspection demands without regard to whether they are propounded before or after the initial setting of a trial date.

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 Trustees 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.