

RESOLUTION 02-03-2018

DIGEST

Discovery: Responses Shall Be Provided Electronically Upon Request

Amends Code of Civil Procedure sections 2030.210, 2031.210, and 2033.210 to require an electronic copy of requests, if sought, and each request for discovery is included in the response.

STATEMENT OF REASONS

The Problem: By not requiring that the party responding to written discovery include the question in the responses, current law invites gamesmanship and inefficiency. The party signing the verification could attempt to disclaim a verified response on the grounds that he/she had not reviewed the actual interrogatories, requests, or demands. Additionally, review of the responses is cumbersome because two documents must be reviewed simultaneously. Moreover, in the event of a motion to compel, the moving party will be required to attach additional exhibits to the motion that in most circumstances could be avoided by inclusion of the interrogatory, request, or demand with the response.

The Solution: To avoid potential gamesmanship and inefficiencies, the party responding to written discovery should be required to include the interrogatory, request, or demand with the response. This eliminates the potential that the verifying party might try to avoid the response by claiming he/she did not review the propounded discovery. Additionally, review of the documents becomes more efficient and streamlined because the parties can generally work from the responses without having to simultaneously review the propounded discovery. This will also decrease the documents filed in a motion to compel. In most discovery disputes where the issues concern the nature of a response or objection, the document propounded is unnecessary to the ruling of the court or discovery referee. What is necessary is the interrogatory, request, or demand and the response thereto. By requiring the response contain the interrogatory, request, or demand, one entire document is rendered unnecessary. This is particularly important in complex multiparty actions where a motion to compel might be filed against several parties.

Admittedly, if the resolution merely required that the response include the propounded discovery, an additional burden is placed on the responding party and the risk of the responding party incorrectly copying the propounded discovery would be created. This resolution avoids these risks, however, by requiring that the propounding party, upon request, provide an electronic copy of the request to the responding party within 3 days. This requirement is similar to the exchange of a separate statement to a motion for summary judgment. (See Cal. Rules of Court, Rule 3.1350(i).)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 2030.210, 2031.210, and 2033.210 to read as follows:

1 § 2030.210

2 (a) The party to whom interrogatories have been propounded shall respond in writing
3 under oath separately to each interrogatory by any of the following:

4 (1) An answer containing the information sought to be discovered.

5 (2) An exercise of the party's option to produce writings.

6 (3) An objection to the particular interrogatory.

7 (b) In the first paragraph of the response immediately below the title of the case, there
8 shall appear the identity of the responding party, the set number, and the identity of the
9 propounding party.

10 (c) Each answer, exercise of option, or objection in the response shall bear the same
11 identifying number or letter, ~~and~~ be in the same sequence as the corresponding interrogatory, ~~but~~
12 ~~the text of that interrogatory need not be repeated~~ and shall include the text of the interrogatory
13 immediately preceding the response.

14 (d) On request, the propounding party must within three days provide to the responding
15 party an electronic version of the interrogatories. The electronic version may be provided in any
16 form on which the parties agree. If the parties are unable to agree on the form, the propounding
17 party must provide to the responding party the electronic version of the interrogatories that it
18 used to prepare the document propounded. Under this subdivision, a party is not required to
19 create an electronic version or any new version of any document for the purpose of transmission
20 to the requesting party.

21
22 § 2031.210

23 (a) The party to whom a demand for inspection, copying, testing, or sampling has been
24 directed shall respond separately to each item or category of item by any of the following:

25 (1) A statement that the party will comply with the particular demand for inspection,
26 copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling
27 pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

28 (2) A representation that the party lacks the ability to comply with the demand for
29 inspection, copying, testing, or sampling of a particular item or category of item.

30 (3) An objection to the particular demand for inspection, copying, testing, or sampling.

31 (b) In the first paragraph of the response immediately below the title of the case, there
32 shall appear the identity of the responding party, the set number, and the identity of the
33 demanding party.

34 (c) Each statement of compliance, each representation, and each objection in the
35 response shall bear the same number, ~~and~~ be in the same sequence as the corresponding item or
36 category in the demand, ~~but the text of that item or category need not be repeated~~ and shall
37 include the text of the demand immediately preceding the response.

38 (d) On request, the propounding party must within three days provide to the responding
39 party an electronic version of the demand. The electronic version may be provided in any form
40 on which the parties agree. If the parties are unable to agree on the form, the propounding party
41 must provide to the responding party the electronic version of the demand that it used to prepare
42 the document propounded. Under this subdivision, a party is not required to create an electronic
43 version or any new version of any document for the purpose of transmission to the requesting
44 party.

45 (e) ~~(d)~~ (e) If a party objects to the discovery of electronically stored information on the
46 grounds that it is from a source that is not reasonably accessible because of undue burden or
47 expense and that the responding party will not search the source in the absence of an agreement

48 with the demanding party or court order, the responding party shall identify in its response the
49 types or categories of sources of electronically stored information that it asserts are not
50 reasonably accessible. By objecting and identifying information of a type or category of source
51 or sources that are not reasonably accessible, the responding party preserves any objections it
52 may have relating to that electronically stored information.

53 § 2033.210

54 (a) The party to whom requests for admission have been directed shall respond in writing
55 under oath separately to each request.

56 (b) Each response shall answer the substance of the requested admission, or set forth an
57 objection to the particular request.

58 (c) In the first paragraph of the response immediately below the title of the case, there
59 shall appear the identity of the responding party, the set number, and the identity of the
60 requesting party.

61 (d) Each answer or objection in the response shall bear the same identifying number or
62 letter, ~~and~~ be in the same sequence as the corresponding request, ~~but the text of the particular~~
63 ~~request need not be repeated~~ and shall include the text of the demand immediately preceding the
64 response.

65 (e) On request, the propounding party must within three days provide to the responding
66 party an electronic version of the request. The electronic version may be provided in any form on
67 which the parties agree. If the parties are unable to agree on the form, the propounding party
68 must provide to the responding party the electronic version of the request that it used to prepare
69 the document propounded. Under this subdivision, a party is not required to create an electronic
70 version or any new version of any document for the purpose of transmission to the requesting
71 party.

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

PROPONENT: Sacramento County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 10-04-2002, which was withdrawn, Resolutions 10-05-2002 and 01-08-2003, which were approved in principle as amended, and Resolution 08-11-2013, which was approved in principle.

Reasons:

This resolution amends Code of Civil Procedure sections 2030.210, 2031.210, and 2033.210 to require an electronic copy of requests, if sought, and each request for discovery is included in the response. This resolution should be approved in principle because it makes discovery less cumbersome to review for both the parties and the court.

When a party to litigation receives discovery responses, they must refer back to the requests to determine the meaning of the response. This is cumbersome, especially where the discovery is particularly voluminous. By requiring the responding party to include the request prior to the response, the parties and the court can look to only one document to see both the questions and the answer. By additionally requiring the propounding party to provide, when asked, an electronic version of the requests, there is no necessity for the responding party to recreate them; they simply merge the requests and answers into the responding document. This is not very different from the manner in which the separate statement in an opposition to summary judgment is prepared and serves a similar purpose.

This resolution is related to Resolution 02-08-2018.