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Effective use of objections in responding to interrogatories

[Ed. Note: This article contains suggested objections which can be adopted in responding to discovery. CAALA members may cut-and-paste the objections listed in this article into their discovery responses by downloading the article from the CAALA Web site at http://www.CAALA.org. The article may be found in the Advocate Magazine section under Advocate Article Archive Library.]

While every case is different and civil litigation styles vary widely from lawyer to lawyer, the one constant in all litigation is basic preliminary written discovery. The goal of written discovery is to permit all parties to identify essential issues necessary to evaluate the case and prepare for depositions and trial. Written discovery usually starts with form interrogatories and special interrogatories.

Unfortunately, all too often, the defense interrogatories are prepared by an inexperienced attorney, generating extra billing hours by propounding useless repetitive questions which are often sent without regard to your client's privacy rights or the relevant issues in the case. The discovery propounded by defense firms are too often boilerplate forms which have not been tailored to the specific case and may not even have been reviewed by the propounding attorney.

Responding to this discovery can be an arduous and unpleasant task. Huge amounts of time can be consumed in preparing responses to some of the nonsense propounded.

What makes the problem even more challenging is that you must ensure that you accurately and completely respond to valid interrogatories. Failure to provide responsive information to proper interrogatories is both improper and unethical. It can also result in a bar to presenting that evidence at trial. Just as important, significant information about your case must be provided if you expect the defense to engage in meaningful mediation.

Given that backdrop, as to each interrogatory propounded, the first question you must ask yourself is, "Must I object?" The next thought you should have is,"Should I object?" followed by, "What objections are available?" Once you have completed that analysis and asserted proper objections, the final question you must decide is whether to answer the question once the objection is stated.

While this article will focus on specific objections, the procedure in responding to discovery is important. Code of Civil Procedure section 2030.290 provides that if responses to interrogatories are not timely, all objections are waived, including the work product protection.

When must/should an objection be stated?

If an objection is not stated in response to written discovery, that objection is waived. (Code of Civ. Proc., § 2030.290; and *Scottsdale Ins. Co. v. Superior Court of Los Angeles County* (1997) 59 Cal.App.4th 263, 273 [69 Cal.Rptr.2d 112, 118].) Although there may be reasons to postpone objections in other areas, it is good practice in written discovery to state all applicable objections in your initial written response.

There are exceptions to waiver; for example, a delayed objection on the grounds of privacy. (*Heda v. Superior Court* (1990) 225 Cal.App.3d 525, 530 [275 Cal.Rptr. 136, 139].) But rather than risk a court ruling regarding a waiver by failing to object, applicable privacy and privilege objections should always be stated. Should the written discovery process land you in law and motion, a practitioner who errors on the side of over-objecting will fair better than the attorney who missed a significant objection.

Your job is not only to prosecute your client's case, but also to protect your client's privacy. When the defense starts seeking your client's social security number, and medical information not related to the injury at bar, or other personal information, it is your job to defend your client's privacy, even if it might be easier to simply give the defense what they are asking for.

Should information be provided even if an objection is stated?

For a plaintiff's attorney, a discovery battle is an undue consumption of time; for a defense attorney, it is a billing bonanza. If you win, you lose; and if you lose, you lose. The best outcome for a plaintiff's attorney is to avoid the fight. Pick your battles wisely.

There is almost no risk in stating an objection if the request is answered anyway. Most requests should be answered, even if an objection is stated. But objecting to every request without providing any answers is sure to end in a defense motion to compel. If an improper question seeks information that will not hurt your case and does not invade your client's privacy, answer the question. Nothing will generate more interest from the defense than a response which makes opposing counsel think you are hiding something important.

There may be discovery requests that seek information defendants are entitled to, but the request is improper in its form. There may be discovery requests

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that seek information that will not damage your case. There may be discovery requests that require a showing of relevance that your judge will eventually grant. In those situations, state the objection, but comply with the request. Specify that compliance does not waive the objection: "Subject to and without waiving said objections, plaintiff responds as follows..."

Objecting to interrogatories

A Pulitzer has never been awarded for objections to written discovery. State objections simply and clearly. Support your objections with legal authority. An objection should be stated just as it would in a response to a "meet and confer" letter, and then into an opposition to a motion to compel. A judge will notice and appreciate this kind of consistency.

Responding to interrogatories is enough work on its own without having to reinvent the wheel and spend countless hours researching cases to support your position that defendant's interrogatory is vague, ambiguous, overbroad, burdensome, oppressive, and not likely to lead to admissible evidence. Therefore, set forth below are suggested objections to the most common discovery issues.

Objections to interrogatories

• ***Argumentative:*** "Objection. This discovery request as phrased is argumentative. It requires the adoption of an assumption, which is improper."

Any discovery request that requires the adoption of an assumption is argumentative. This is objectionable as to form. The classic example is, "When did you stop beating your wife?" This question assumes facts that may not be true, but requires the answer adopt the assumption.

• ***Already asked, repetitive discovery:*** "Objection. This discovery request has, in substance, been previously propounded. (See Interrogatory/Request No. ___.) Continuous discovery into the same matter constitutes oppression, and Plaintiff further objects on that ground. (*Professional Career Colleges v. Superior Court* (1989) 207 Cal.App.3d 490, 493-494 [255 Cal.Rptr. 5, 7-8].)"

Although not a forceful objection, if the defendant continuously seeks the same information, irrespective of the phrasing of the request, it may be grounds for a protective order based upon oppression.

• ***Attorney-client privilege:*** "Objection. The request seeks information subject to the attorney-client privilege. The attorney-client privilege is broadly construed, and extends to "factual information" and "legal advice." (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 601 [208 Cal.Rptr. 886, 891].)"

Communications between client and counsel are privileged. They are presumed to be made in confidence, and broadly privileged against from discovery. This is a very broad privilege which extends to "factual information" and "legal advice."

• ***Attorney work-product protection:*** "This discovery request seeks attorney work product in violation of Code of Civil Procedure sections 2018.020 and 2018.030. (*Cite appropriate case law and/or analysis of how the information sought is derivative in nature.*)"

Code of Civil Procedure section 2018.030 subdivision (a) states, "[a] writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories is not discoverable under any circumstances." Subdivision (b) expands the protection to include any other attorney work-product, "unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in injustice."

The purpose of this protection is to "[p]reserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases," and to "[p]revent attorneys from taking undue advantage of their adversary's industry and efforts." (Code of Civ. Proc., § 2018.020.)

In analyzing the work-product privilege, courts have determined that only derivative materials are protected. Derivative work-product is that information created by or resulting from an attorney's work on behalf of a client that reflects the attorney's evaluation or interpretation of the law or the facts involved. Nonderivative materials are those that are only evidentiary in character. These are not protected even if a lot of attorney "work" may have gone into locating and identifying them. (*Mack v. Superior Court* (1968) 259 Cal.App.2d 7, 10 [66 Cal.Rptr. 280, 283].

There is ample case law delineating derivative versus nonderivative work product. Objections into this should contain case law on point. The following cases will assist in tailoring your work product objection: *Mack v. Superior Court of Sacramento County*; *Williamson v. Superior Court of Los Angeles County* (1978) 21 Cal.3d 829 [148 Cal.Rptr. 39]; *Brown v. Superior Court of Butte County*, (1963) 218 Cal.App.2d 430 [32 Cal.Rptr. 527]; and *Nacht & Lewis Architects v. Superior Court* (1996) 47 Cal.App.4th 214 [54 Cal.Rptr.2d 575].

• ***Premature disclosure of experts:*** "Objection. The interrogatory seeks premature disclosure of expert opinion in violation of Code of Civil Procedure sections 2034.210, 2034.220, and 2034.270. The interrogatory also seeks attorney work-product in violation of Code of Civil Procedure sections 2018.020 and 2018.030. Plaintiff has not decided on which, if any, expert witnesses may be called at trial; insofar as this interrogatory seeks to ascertain the identity, writings, and opinions of plaintiff's experts who have been retained or utilized to date solely as an advisor or consultant, it is violative of the work-product privilege. (See *South Tahoe Public Utilities District v. Superior Court* (1979) 90 Cal.App.3d 135 [154 Cal.Rptr. 1]; *Sheets v. Superior Court* (1967) 257 Cal.App.2d 1 [64 Cal.Rptr. 753]; *and Sanders v. Superior Court*, (1973) 34 Cal.App.3d 270 [109 Cal.Rptr. 770].)"

It is improper for an interrogatory to seek the identity, writings or the opinions of an expert prior to the exchange

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of expert witnesses. (*South Tahoe Public Utilities District v. Superior Court* (1979) 90 Cal.App.3d 135, [154 Cal.Rptr. 1].) Plaintiffs' attorneys commonly encounter discovery requests which seek medical, biomechanical, or legal conclusions. Often the only source of information to respond to the interrogatory is from an expert witness. Since the work-product protection includes the work-product of an attorney's employees and agents, it includes the opinions of employees and agents. (*Rodriguez v. McDonnell Douglas Corp*. (1978) 87 Cal.App.3d 626, 647-648. [151 Cal.Rptr. 399, 410-411].)

• ***Burdensome, oppressive, overbroad:*** "Objection. This discovery request is so broad and unlimited as to time and scope as to be an unwarranted annoyance, embarrassment, and is oppressive. To comply with the request would be an undue burden and expense on the plaintiff. The request is calculated to annoy and harass plaintiff. (See Code of Civ. Proc., § 2030.090 subd. (b); and *Columbia Broadcasting System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 19 [69 Cal.Rptr. 348, 352].)"

While this is often a valid objection, it is rarely a basis for not providing a response. Before standing on this objection, sincere "meet and confer" efforts should be made to resolve the issue.

• ***Collateral source rule:*** "Objection. This discovery request seeks information not relevant to the subject matter of this lawsuit and not calculated to lead to the discovery of admissible evidence in violation of the collateral source rule. This request is also an invasion of Plaintiff's right to privacy. (See *Hrnjak v. Graymar* (1971) 4 Cal.3d 725 [94 Cal.Rptr. 623]; *Pacific Gas & Electric Company v. Superior Court* (1994) 28 Cal.App.4th 174 [33 Cal.Rptr.2d 522]; and *Helfend v. SCRTD* (1970) 2 Cal.3d 1 [84 Cal.Rptr. 173].)

Code of Civil Procedure section 2017.210 permits discovery only of "insurance ... [that] may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Health insurance is not insurance available to satisfy a judgment or reimburse of payments made to satisfy a judgment. Section 2017.210 was enacted to permit a plaintiff to discover information about a defendant's liability insurance in order to facilitate settlement. The legislative history, context and purpose of Section 2017.210 demonstrate that the section was specifically intended to authorize limited discovery of a defendant's liability insurance coverage and not any other type of insurance. (See *Catholic Mut. Relief Soc. v. Superior Court* (2007) 42 Cal.4th 358 [64 Cal.Rptr.3d 434].)

Furthermore, personal financial information is within the "zone of privacy" protected by the California Constitution, article I, section 1. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656 [125 Cal.Rptr. 553, 555]). The Insurance Information Act and Privacy Protection Act, Insurance Code section 793, et seq., limits the disclosure of information in connection with insurance transactions. (*Griffith v. State Farm Mutual Auto Ins. Co.* (1990) 230 Cal.App.3d 59, 65-71 [281 Cal.Rptr. 165, 167-171].) "Privileged information" refers to any individually identifiable information that both "(1) relates to a claim for insurance benefits...(2) is collected in connection with or in reasonable anticipation of a claim for insurance benefits..." (Ins. Code, § 791.02 subd. (v).)"

Unless the case involves an exception to the collateral source rule (Civ. Code, § 3333.1 or Gov.Code, § 985), an objection should be asserted to providing *any* information about health insurance, health insurance policies or payments made by a health insurance or other insurance company, including an objection to Form Interrogatory No. 4.1.

Asserting such an objection is particularly important in today's climate in which some judges have interpreted *Hanif v. Housing Authority of Yolo County* (1988) 200 Cal.App.3d 635 [246 Cal.Rptr. 192] to require a post-verdict hearing to reduce plaintiff's medical bills to the amount actually paid. CAALA members and an increasing number of bench officers do not agree that the *Hanif* case gives the defendant a right to such a post-trial hearing or reduction, which effectively abrogates the collateral source rule.

Counsel should begin educating the judge with respect to this issue during discovery, rather than waiting until after a verdict for plaintiff. Furthermore, a more persuasive argument can be made that there is no evidentiary basis for a post-trial ruling by the judge where there is no admissible evidence of what the insurance company paid on behalf of its insured.

• ***Equally available:*** "Objection. The information sought in this discovery request is equally available to the propounding party. (See Code of Civ. Proc., § 2030.220 subd. (c); and *Alpine Mutual Water Co. v. Superior Court* (1968) 259 Cal.App.2d 45 [66 Cal.Rptr. 250].)"

A party has an obligation to make a reasonable and good faith effort to obtain requested information, "except where the information is equally available to the propounding party." (Code of Civ. Proc., § 2030.220 subd. (c).)

• ***Irrelevant:*** "Objection. Irrelevant. Plaintiff's _____ is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. (Code of Civ. Proc, § 2017.010.)"

Again, this may be an objection worth stating, but is an objection which a court generally is not likely to sustain. Broad discovery is permissible by both parties, and a relevancy objection in discovery is largely disfavored.

• ***Medical records/medical history:*** "Objection. This discovery request seeks to discover plaintiff's medical history and/or treatment which is completely unrelated to the issues in this litigation in violation of plaintiff's constitutionally protected right to privacy under Article I, section I of the California Constitution. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842 [239 Cal.Rptr. 292, 299]; and *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014-1016 [9 Cal.Rptr.2d 331, 335].)

To require plaintiff to delineate his or her entire medical history is not reasonably calculated to lead to the discov-

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ery of admissible evidence, and overbroad. (*Hallendorf v. Superior Court* (1978) 85 Cal.App.3d 553, 557 [149 Cal.Rptr. 564, 566.]) The disclosure of medical history and medical records cannot be compelled even though they may, in some sense, be relevant to the substantive issues of litigation. The medical records must be directly relevant to the lawsuit. (*In re Lifschutz* (1970) 2 Cal.3d 415, 435 [85 Cal.Rptr. 829, 842].)"

In an injury case, the injured parties' privacy rights are subordinate to the right of discovery, but only as to relevant medical history. Plaintiffs can still assert their right of privacy to protect the disclosure of medical information not directly relevant to the lawsuit. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842 [239 Cal.Rptr. 292, 299].) This applies to mental health records in an injury claim where only "garden variety" emotional distress is claimed. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014-1016 [9 Cal.Rptr.2d 331, 334-336].)

• ***More than thirty-five special interrogatories*:** "Objection. This interrogatory fails to comply with Code of Civil Procedure section 2030.030 subdivision (b) as the propounding party has exceeded the limit of special interrogatories."

A party may not serve more than thirty-five (35) total special interrogatories without a supporting declaration setting forth the need for the additional requests. (Code of Civ. Proc, § 2030.030.) Absent a declaration, the responding party is still obligated to respond to the first thirty-five (35) special interrogatories. (Code of Civ. Proc., § 2030.030 subd. (c).)

• ***Prefatory instructions and definitions:*** "Objection. This set of discovery utilizes preliminary instructions and relies on preliminary/introductory definitions in violation of Code of Civil Procedure section 2030.060 subdivision (d)."

Written discovery sets often have prefatory instructions and definitions. This is improper. (Code of Civ. Proc, § 2030.060 subd. (d).) Definitions are proper, but must appear in the interrogatory itself. (*Ibid*.) In response, state an objection in each and every request. (Code of Civ. Proc, § 2030.210 subd. (a)(3).)

• ***Preparing a defendant's case and legal contentions:*** "Objection. This discovery request seeks the legal reasoning and theories of plaintiff's contentions. Plaintiff is not required to prepare the defendant's case. (*Sav-On Drugs, Inc. v. Superior Court of Los Angeles County* (1975) 15 Cal.3d 1, 5 [123 Cal.Rptr. 283, 286].). A plaintiff is not required to prepare the case of his opponent. (*Ryan v. Superior Court of Los Angeles County* (1960) 186 Cal.App.2d 813, 819, [9 Cal.Rptr. 147, 151].)"

While it is proper to discover a plaintiff's legal contentions, the legal reasoning or theories behind the contentions are not discoverable. (*Sav-On Drugs, Inc. v. Superior Court of Los Angeles County* (1975) 15 Cal.3d 1, 5 [123 Cal.Rptr. 283, 287].) A party is not obligated to perform legal research for another party. (*Ibid*.)

• ***Subparts, compound, conjunctive, or disjunctive:*** "Objection. This interrogatory contains subparts, or a compound, conjunctive, or disjunctive question in violation of Code of Civil Procedure section 2030.060 subdivision (f)."

• ***Social Security information:*** "Objection. A party's social security number is "clearly irrelevant to the subject matter of the action." (*Smith v. Superior Court of San Joaquin County* (1961) 189 Cal.App.2d 6, 9, 13, [11 Cal.Rptr. 165, 168, 170].)"

• ***Tax returns and W-2s:*** "Objection. Information regarding tax returns, including income tax returns, W-2 and/or 1099 forms, is privileged under federal and state law. (See *Webb v. Standard Oil Co*. (1957) 49 Cal.2d 509 [319 P.2d 621]; *Brown v. Superior Court* (1977) 71 Cal.App.3d 141 [139 Cal.Rptr. 327]; *Aday v. Superior Court* (1961) 55 Cal.2d 789 [13 Cal.Rptr. 415]; *Schnabel v. Superior Court* (1993) 5 Cal.4th 704 [21 Cal.Rptr.2d 200].) This privilege is to be broadly construed. (*Sav-on Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 6-7 [123 Cal.Rptr. 283, 287].)"

• ***Compilation required:*** "Objection: The interrogatory would necessitate the preparation of a compilation, abstract, audit or summary from documents in plaintiff's possession; because such preparation would be similarly burdensome and/or expensive to both the propounding and responding parties, plaintiff herewith offers to permit review of the following documents, _____, from which propounding party can audit, inspect, copy or summarize. Responding party will make said documents available for review upon reasonable request. (Code of Civ. Proc, § 2030.230; and *Brotsky v. State Bar of California* (1962) 57 Cal.2d 287 [19 Cal.Rptr. 153].)"

• ***Continuing interrogatory:*** "Objection: The question requires the responding party to supplement an answer to it that was initially correct, thus constituting a "continuing" interrogatory in violation of Code of Civil Procedure section 2030.060 subdivision (g)."

Conclusion

These "standard" objections are a helpful starting point in dealing with interrogatory responses. Responding to discovery without giving each question significant analysis can cause a lot of damage to your case. On more important issues, it is always worthwhile to check all citations and check for any changes in the law. The CAALA Web site is also a good source of information regarding any changes to the law. Defense counsel will use the information contained in your client's interrogatories at deposition, and throughout the case; so spend the time necessary to make sure your client has provided accurate responses.

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