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Drafting & Responding to Special Interrogatories

The California Lawyer's Guide to Best Practices

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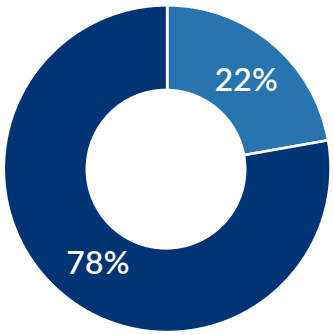
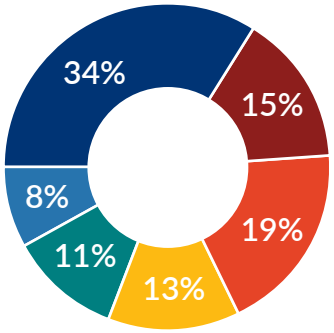
Introduction



Litigation Pageviews

- Discovery Procedure
- All other Litigation Procedure



Discovery Pageviews

- Discovery Motions & Sanctions
- Depositions
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If you're a litigator in California, you do a lot of discovery. If you're a plaintiff's lawyer, the evidence you obtain in discovery will tell you how much your case is worth. For defense counsel, discovery dictates your evaluation of an appropriate settlement value or determines whether you can dispose of the entire matter via summary judgment.

Despite the large amount of time lawyers spend propounding and responding to discovery requests, many attorneys still worry they haven't mastered the basics of discovery procedure. Nearly a quarter of the time California lawyers spend researching litigation practice and procedure is spent researching discovery procedure.[1] And approximately 13% of discovery research centers on interrogatories.[2]

What are lawyers spending so much time researching? The basics. Most legal research queries about interrogatories center on:

- Drafting interrogatories
  - The rules limiting the allowable number of special interrogatories
  - Drafting contention interrogatories
- Responding to interrogatories
  - Managing your client & obtaining information;
  - Objecting to interrogatories

By mastering these rules and best practices, California attorneys, like yourself, can streamline discovery process, gain confidence when drafting or responding to interrogatories, and spend less time researching procedure and more time creating better client outcomes.

[1]Data taken from 18 months of page views of all CEB Litigation Practice & Procedure content.
[2]Data taken from 18 months of page views of all CEB discovery-centric chapters and titles.

Drafting Interrogatories

How to justify propounding more than 35 special interrogatories.

Most litigators know that you can, as a matter of right, propound **35 special interrogatories** each to any other party to the lawsuit, but not everyone is as comfortable using the rules that allow you to propound additional interrogatories when needed. (Code Civ. Proc., § 2030.030(b).) So how do you justify propounding more than 35? Follow these simple steps:

1. Draft a declaration that you can attach to the special interrogatories you serve on the opposing party; and
2. Ensure your declaration contains support for one or more of the following justifications for extra interrogatories, pursuant to Code Civ. Proc. § 2030.040:
    - The complexity or quantity of issues in the case;
    - The financial burden on a party resulting from conducting the same discovery via deposition; and/or
    - The expedience of using special interrogatories to give the responding party the chance to conduct an inquiry, investigation, or search or files or records to provide the information sought.

There are **two other ways to stretch the reach of your special interrogatories**, even if you are limited to sending no more than 35:

1. **Judicial Council form interrogatories.** These form interrogatories are not subject to the special interrogatory limit of 35 and can be useful in a wide variety of commercial disputes and personal injury actions. Form Interrogatory Nos. 15 and 17 are particularly useful.
2. **Supplemental interrogatories.** You can and should propound a supplemental interrogatory to require other parties to update their prior interrogatory responses with any newly discovered information. (Code Civ. Proc., § 2030.070(a).) These "cleanup" interrogatories can be propounded twice before and once after the initial trial date is set. (Code Civ. Proc., § 2030.070 subd. (a)–(b).)

7 TIPS

7 tips for drafting special interrogatories (including contention interrogatories).

> Do you contend that plaintiff's claim is barred by the provisions of Code of Civil Procedure § 339?

Now that you know how many special interrogatories you can send, you need to sit down and draft them. Follow these guidelines to draft your special interrogatories as succinctly and efficiently as possible:

1. **Create an outline of the information you need before you start drafting.** Think of each category of information you need – different categories of documents, witnesses, and facts relevant to different causes of action or affirmative defenses.

2. **Ask about specific contentions.** Contention interrogatories can help you identify exactly how other parties view the case and, more importantly, the factual support for their claims, counterclaims, or defenses. Examples of good, specific contention interrogatories include:

    - Do you contend that plaintiff's claim is barred by the provisions of Code of Civil Procedure § 339?
    - Do you contend that plaintiff is the owner of Blackacre?

3. **Obtain all facts, documents, witnesses, or other evidentiary support for specific contentions.** Get all the facts on which the opposing party's key contentions are based. For example, "State all facts on which you based your contention that [quote factual allegation from pleading]." Direct quotations of the pleadings is the best choice because merely referring to a pleading in an interrogatory will invite an objection that the interrogatory isn't "full and complete" under CCP §2030.060(d). You can also try this format: "If you contend that plaintiff's conduct constitutes contributory negligence regarding the INCIDENT, state all facts on which you base that contention."

4. **For non-contention interrogatories, narrowly draft each question to call for short, targeted answers.** Not only are shorter answers more difficult to disclaim or misinterpret in a later deposition, they are also easier to use at trial if needed. Additionally, broadly drafted interrogatories are more likely to draw objections or to produce vague or general answers that are too qualified to be of much value. Compare these two versions of the same question in a personal injury action.

    - Version A (too general): "Describe the maintenance policies and maintenance schedules for delivery trucks owned by Acme, Inc."

    - Version B (more targeted): Describe any and all times within the last year that the delivery truck involved in the ACCIDENT owned by Acme, Inc. was serviced or maintained, including the dates of the service and a description of the services performed.

5. **Make sure your defined terms are clear and precise.** If a term needs to be specially defined, capitalize the defined words wherever they appear throughout the interrogatories. (Code Civ. Proc., § 2030.060(e).) Additionally, be sure to define the term within the question itself when the term first appears in the interrogatories (e.g., "State the date upon which you acquired the REAL PROPERTY. ('REAL PROPERTY' as used in these interrogatories refers to 123 Main Street, Anytown, California)").

6. **Verify that each interrogatory is full and complete.** Make each question complete and self-contained (Code Civ. Proc., § 2030.060(d)). In other words, interrogatories can't refer to a preceding question or make the responding party refer to other documents to understand the question. Don't use subparts or compound, conjunctive, or disjunctive questions. (Code Civ. Proc., § 2030.060(f).)

7. **Proofread.** If you have the time to spare, step away from your draft for a day or so, then go back and proofread with fresh eyes to make sure your interrogatories are as clear and concise as possible.

Responding (& Objecting) to Interrogatories

> "Often laypeople embroiled in a lawsuit get frustrated by the slowness of the process, especially where they feel that the case should be swiftly resolved in their favor. Explain that any party served with interrogatories has a duty to respond to each and every interrogatory, by answering, exercising the option to produce writings, or objecting, lest that party waive their rights and be subject to sanctions."

If another party to the case propounds interrogatories to you, you have a duty to respond by either answering, producing relevant writings, or objecting, as appropriate. (Code. Civ. Proc. §§ 2030.010–2030.410). To do that, you must manage your client's expectations of the discovery process, get them to turn over all necessary information responsive to the interrogatories, and avoid waiving your rights by neglecting to make the right objections.

Counsel your clients on their duties & obligations.

1. Explain that you must respond, and why, and by what date. Often laypeople embroiled in a lawsuit get frustrated by the slowness of the process, especially where they feel that the case should be swiftly resolved in their favor. Explain that any party served with interrogatories has a duty to respond to each and every interrogatory, by answering, exercising the option to produce writings, or objecting, lest that party waive their rights and be subject to sanctions. (Code Civ. Proc., §§ 2030.010–2030.410, 2030.290–2030.300.)

2. Be thorough when getting information & documents from your client. Each answer must be as "complete and straightforward as the information reasonably available to the responding party permits." (Code Civ. Proc., § 2030.220(a).) If you can't answer an interrogatory completely, you have to answer "to the extent possible." (Code Civ. Proc., § 2030.220(b).) The court will consider whether a party has made a good faith effort to answer; inadequate responses to legitimate interrogatories generally result in sanctions. That means you need to make sure your client has turned over all relevant information and documents to you ASAP.

3. You can object if it's too burdensome. Interrogatories are probably the most burdensome of discovery procedures, even when proper questions are asked. But you do have the right to object on grounds of burden, so explain to your client that you will determine when objecting or seeking a protective order is an appropriate response to an interrogatory.

CHECKLIST

- ✓ Irrelevant
- ✓ Overbroad
- ✓ Annoyance, embarassment, opression
- ✓ Unreasonably cumulative or undue burden and expense
- ✓ Information equally available to both parties
- ✓ Work product protection
- ✓ Privilege
- ✓ Information too remote from subject matter of action

Common Objections to Interrogatories

No matter how familiar you are with the discovery process, you may struggle to remember which objections are appropriate when responding to special interrogatories. Although this checklist is not a complete list, it does identify the most commonly used objections to discovery requests:

1. **Irrelevant.** Use this objection sparingly because it is disfavored by the courts. The standard of relevancy in discovery proceedings is quite broad. (Deaile v. General Tel. Co. (1974) 40 Cal.App.3d 841, 850.)
2. **Overbroad.** You can object to "shotgun" interrogatories that request so much information that it becomes burdensome to respond, e.g., the identity of "all" persons or "every" person having knowledge of the relevant facts. (Romero v. Hern (1969) 276 Cal.App.2d 787, 794.) In a simple case with limited witnesses, that question might be perfectly acceptable, but in a situation with more complex facts it might be nearly impossible to respond to without more specificity.
3. **Annoyance, embarrassment, oppression.** A party may object to interrogatories when being required to answer would result in "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2023.010(c).)
4. **Unreasonably cumulative or undue burden and expense.** The discovery statutes specifically recognize "burden" as a valid basis to object or seek a protective order. (See Code Civ. Proc., §§ 2017.020(a), 2019.030(a)(1)–(2), 2023.010(c), 2030.090(b).) The court may also limit discovery on a showing that "[t]he discovery sought is unreasonably cumulative or duplicative." (Code Civ. Proc., § 2019.030(a)(1).)
5. **Information equally available to both parties.** Object if "[t]he discovery sought is…obtainable from some other source that is more convenient, less burdensome, or less expensive." (Code Civ. Proc., § 2019.030(a)(1).) Thus, a party may object that the information sought is equally available to the propounding party and therefore unduly burdensome.

Checklist: Common Objections to Interrogatories (continued)

6. **Work product protection.** Interrogatories are objectionable if they call for matter that falls within the attorney's work product (Code Civ. Proc., §§ 2018.010–2018.080) -- for example, when they call for an opponent's legal reasoning or theories. (Code Civ. Proc., § 2018.030(a).) The identity of potential witnesses interviewed by opposing counsel may also be protected by the work product doctrine. (Coito v. Superior Court (2012) 54 Cal.4th 480.)

7. **Privilege.** Claims of privilege ordinarily may be raised by objection or by motion for protective order under Code of Civil Procedure section 2030.090. Generally, it's a valid objection that questions related to the contents of either federal or state tax returns, as well as W-2 forms, are privileged, but there are exceptions, such as in marital dissolution proceedings or when a party has waived the privilege. (Schnabel v. Superior Court (1993) 5 Cal.4th 704, 720.)

8. **Information too remote from subject matter of action.** It's a valid objection to interrogatories that they stray too far from the issues and seek information that can't reasonably serve the acknowledged purpose of pretrial discovery. (Columbia Board. Sys. v. Superior Court (1968) 263 Cal.App.2d 12, 18.)

Conclusion

Drafting and responding to special interrogatories – as well as researching proper discovery procedure – can be unnecessarily time-consuming. Use the best practices outlined above to shorten the time you spend researching special interrogatories, avoid unnecessary discovery disputes, and plan ahead for dispositive motions and settlement negotiations.

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