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Interrogation room

Using and responding to interrogatories


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By Miles B. Cooper

It was the beginning of the case, and the lawyer wanted to know more about the defendant. In particular, the lawyer wanted insurance information. The lawyer had a sneaking suspicion there was a lurking excess policy. Time to send out some interrogatories.

A good formula

The Judicial Counsel created discovery's simplest tool, form interrogatories. Whether using the court's website or a court forms-builder, form interrogatories gather preliminary information just by checking some boxes. Send them out early in a case, and over-check the boxes. Suing an individual? Include the business entity 3.0 series to see if there's more to this individual. The same is true with the 15.0 and 16.0 defenses and contentions series. This will draw "too early" objections. Fine. Will you remember to send a separate 15.0 and 16.0 series out later? One does send out supplemental interrogatories at the end of the case. Two discovery sets – initial and supplemental – are more efficient than three, and the supplementals then require 15.0 and 16.0 answers. Multiply this by your lifetime caseload and the efficiency makes sense.

It also makes sense to send form interrogatories out with Requests for Admissions and check the form interrogatory 17.1 box. This simple x mark requires the other side to provide responsive information for every response that is not an unqualified "Admit." And how many times does one receive those? For more on admissions, see https://www.plaintiffmagazine.com/recent-issues/item/admit-nothing – Plaintiff, November 2020.

Client questionnaires make responding to form interrogatories easier. Order the questionnaire similarly to the form interrogatories. Is it the perfect flow for everyone? No. Does this method simplify turning the answers into draft responses? Yes. Send the draft to the client, set a call to review them, gather any further information, and get the responses out. When responding to discovery, avoid extensions of time. While these are liberally granted and there may sometimes be reasons for extensions, they set a slow roll tone, lengthening the case. Lengthening case life doesn't help clients generally and requires more lawyer time investment and cost.

Well, isn't that special?

Opinions differ regarding special interrogatories. Special interrogatories are governed by the Rule of 35, where only 35 interrogatories are allowed unless the case has a certain complexity or significant number of issues. In these cases, more questions can be asked so long as they are sent out with a Declaration for Additional Discovery. The declaration will come in the simplest of cases. Moving for a protective order usually takes more time than formulating answers, thus making the Rule of 35 more like a guideline.

In our experience written discovery, particularly special interrogatories, create time-consuming meet and confer and motion battles that advantage hourly billers, not contingent-fee lawyers. Before crafting special interrogatories, ask whether the same information can be obtained through a person most knowledgeable deposition. The witness, while prepared, won't be the lawyer's perfect marionette. If one must ask special interrogatories, keep them targeted with straightforward definitions.

The same firms that exhibit challenging behavior send out special interrogatories in droves. These tend to be lawyers who rarely try cases. The answers to these questions never get courtroom airtime. The interrogatories tend to come in two distinct variants: contention interrogatories and "Bring me a shrubbery!" questions. Contention interrogatories cut and paste every sentence from the complaint and demand identification of all facts, witnesses, and documents that support the contention. Shrubbery questions demand one compile information – "Identify all dates YOU attended physical therapy." Both can be deftly turned with C.C.P. § 2030.230, the compilation response. Cite the section, note that answering the interrogatory requires making a compilation or summary of equally available documents, that the burden of making this compilation is the same for the propounding and responding party, and list the documents. That's it. Using the physical therapy question from above as an example, answer "Plaintiff directs defendant to plaintiff's previously produced medical records Bates PLTF00001-001215, plaintiff's deposition, and plaintiff's physical therapist Pat Doe's deposition."

What's Supp?

You knew that pun was coming from the moment you started reading this. Supplemental interrogatories are the refresh button, where checking more boxes in form interrogatories at the case beginning pays off. One simple request, sent toward the end of discovery, requires the other side to update all prior answers. Most calendaring programs include sending out supplemental interrogatories as a date that flows from a trial date. If yours doesn't, pick a date within the discovery cutoff that works for you and build it into your case checklist. When responding to supplemental interrogatories, make sure to update medical providers, witnesses, and anything else that may have evolved during the case. Failure to do so risks the information being precluded from use at trial.

Outro

Back to our lawyer, a little while later. The defendant's form interrogatories came in. The coy adjuster, prior to filing, had danced around the excess question. Now, there in print, was the excess policy information the lawyer needed to make some important strategy decisions. Time to have a conversation with the client.

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