⚖ DEPARTMENT 51 | COURTROOM INFORMATION ⚖
Updated 10/10/24

JUDGE: Upinder S. Kalra
JUDICIAL ASSISTANT: Catherine Crow
COURTROOM ASSISTANT: Alison Alba

LOCATION: 5th Floor, Stanley Mosk Courthouse
Los Angeles, CA 90012

TELEPHONE NUMBER: (213) 633-0351/0350
EMAIL smcdept51@lacourt.org

COURTROOM HOURS: Monday through Friday
8:30 A.M. – 12:00 P.M.
1:30 P.M. – 4:30 P.M.
(Closed for Lunch: 12:00 P.M. – 1:30 P.M.)

THE COURT WILL BE DARK ON THE FOLLOWING DAYS IN 2024:

October 21, 2024 - November 4, 2024
December 23, 2024 - December 31, 2024

The standard for Ex Parte Applications ("irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte") will be strictly enforced. In other words, think twice before filing such an application. Also, the court will not be able to process orders and stipulations filed during this period.

The Court encourages remote appearances via LACourtConnect:
https://my.lacourt.org/laccwelcome

Department 51 is an independent/direct calendar court. Parties and counsel should review the provisions of the California Code of Civil Procedure, the California Rules of Court, and the Los Angeles Superior Court Local Rules, Chapter 3, Civil Division Rules ("Local Rules") that apply to unlimited civil actions in independent calendar courts.

The parties and counsel are encouraged to advise the Court of their pronouns. People appearing before this Court may do so in writing and when appearing for conferences, hearings or trials. Attorneys are encouraged to identify their

pronouns in their signature lines when submitting documents for filing. ***All parties and counsel are instructed to address each other in all written documents and court proceedings by those pronouns previously identified.***

Case Management Conferences

Case Management Conferences are held at 8:30 a.m. The parties must comply with California Rules of Court, rule 3.722, et seq., and Local Rule 3.25 in connection with such conferences.

Counsel attending a CMC should be sufficiently knowledgeable about the case to address and agree upon matters listed in the CMC statement, including a discussion about the factual details of the pleadings.

Discovery

All civil actions filed after January 1, 2024 are subject to the initial discovery disclosures requirements of CCP § 2016.090.[1] The Court may enforce the requirements of section 2016.090 on its own motion or on the motion of a party. In addition, motions to compel or compel further under the traditional discovery statutes are also available. However, the Court requires all counsel to exhaust *legitimate* meet and confer efforts, first, and absent a showing of good cause, the Court may continue any discovery motion filed before an informal discovery conference (IDC) is conducted. Accordingly, the parties are encouraged to schedule an IDC *before* going to the expense and trouble of filing a discovery motion. Scheduling an IDC tolls the deadline for filing a discovery motion until further order of the Court.

Counsel are directed to call or email the Courtroom Assistant (SMCDEPT51@lacourt.org) to set up a time for an IDC. Please be prepared with three possible dates.

At least four court days before the IDC, the moving party must file and serve a memorandum no longer than three pages setting forth the outstanding issues. The first paragraph shall be formatted as follows: (1) a neutral statement of the dispute; and (2) one to three sentences describing (not arguing) each parties' position.

The relevant discovery requests and responses *may* be attached. *Brevity* is encouraged. The responding party may file and serve a responsive

[1]This section does not apply to any party who is self-represented.

memorandum of no more than three pages at least two court days prior to the IDC using the same protocol set forth above.

Attached are articles written by the Hon. Randolph Hammock and the Hon. Lawrence Riff on Discovery that the Court finds to be persuasive and, as such, the parties may find helpful in navigating discovery disputes.

Law and Motion

Law and motion hearings are conducted beginning at 9:00 a.m. *Hearing dates must be reserved through the Court's Reservation System (CRS).* Counsel shall include the reservation number of the motion on the CAPTION page.

Please do not call the courtroom to reserve a motion date.

Pursuant to CCP § 1010.6 and local Rule 3.4 which references General Order 2020-GEN-018-00 issued June 11, 2020, the Court orders all parties who use e-filing to accept electronic service, except in those circumstances when personal service is required by law or where any of the parties are self-represented.

The Court may post tentative rulings no later than 3:00 p.m., the court day immediately prior to the hearing. Please be aware that once the Tentative ruling is posted, in order to avoid making "a mockery of the tentative ruling procedure" (*Groth Bros. Oldsmobile, Inc. v. Gallagher* (2002) 97 Cal.App.4th 60, 73), the Court may elect not to process a request for voluntary dismissal.

Counsel who intend to submit on the tentative may send an email to the court at smcdept51@lacourt.org by 8:00 a.m. the day of the hearing. If counsel submits on the tentative, counsel's email must include the case number and identify the party submitting on the tentative with a copy (cc) to opposing counsel. **IF ALL** counsel submit, the Court will adopt the tentative as the final order. Otherwise, the court will call the matter and since the ruling is only a Tentative Ruling, the court is free to change the ruling. In addition, if the Department does not receive an email indicating all parties are submitting on the tentative and there are no appearances at the hearing, the motion may be placed off calendar.

Ex Parte Applications

Ex parte applications will be considered Monday through Friday at 8:30am. **Pursuant General Order 2020-GEN-018-00 and Code of Civil Procedure § 166(a)(l), the court may rule from chambers and may not necessarily hear oral argument for an ex parte application for relief.**

All Ex parte applications and documents in support thereof must be electronically filed no later than 10:00 a.m. the *court day before* the hearing. Any written opposition shall be electronically filed by 8:30 a.m. the day of the hearing.

Pursuant to California Rules of Court, rule 2.253(b)(2), self-represented litigants are exempt from these mandatory Electronic Filing requirements.

PLEASE CAREFULLY REVIEW WHETHER YOU HAVE A PROPER BASIS TO SEEK EX PARTE RELIEF. There must be an affirmative showing of "irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." (See Cal.Rules of Court, rule 3.1202 (c).) You will need to demonstrate to the court the reason(s) why you cannot seek the requested relief by other means, such as a noticed motion.

The court encourages reserving motion dates as soon as possible, particularly Motions for Summary Judgment or Summary Adjudication. Failing to timely reserve a motion date does not constitute irreparable harm.

Settlement Conferences

The Los Angeles Superior Court has a variety of settlement programs.

•EMPLOYMENT LAW CASES (RESOLVE LA (RLLA))
RLLA leverages the talents of volunteer settlement officers to conduct virtual MSCs to facilitate case resolution for employment cases.
For more information, access the RLLA web portal at resolvelawla.com

•CIVIL MEDIATION VENDOR LIST
ADR Services, Inc. and the Mediation Center of Los Angeles have agreed to provide **a limited** number of services at reduced or no cost. Information can be found at the following link:
https://www.lacourt.org/division/civil/CI0109.aspx

•JUDICIAL MANDATORY SETTLEMENT CONFERENCE
The Judicial Mandatory Settlement Conference (MSC) Program is free of charge and staffed by experienced sitting civil judges who devote their time exclusively to presiding over MSCs. Interested parties should contact the court to obtain **an order**. Further information can be found at the following link: https://www.lacourt.org/division/civil/CI0047.aspx

The court is also willing to personally conduct settlement conferences for cases assigned to this Department. Please contact the courtroom assistant to arrange a conference. Please also review and execute the Stipulation to Policies and Procedures for Mandatory Settlement Conferences at the following link: https://www.lacourt.org/division/civil/pdf/CIV287MSCPoliciesandProceduresStipulation5-21.pdf

Trial Preparation Order

Final Status Conference

Final Status Conferences will be set at 9:30 a.m. Pursuant to Local Rule 3.25(f), parties must meet and confer and submit the following **JOINT** documents five court days before the FSC:

Joint Exhibit List

Pursuant to California Rule of Court 3.1110(f) and Los Angeles County Superior Court Rules 3.52 and 3.53, all exhibits must be exchanged and pre-numbered, except for those anticipated in good faith to be used for impeachment or during rebuttal. For exhibits a party intends to admit into evidence, please indicate the moving party, stipulations on authentication in one column and stipulations on admissibility in the next column. If there are no objections, please state the basis for any objection i.e., hearsay, etc. **The Court will likely rule on objections to admission of Exhibits at the Final Status Conference**. **If the Court rules an Exhibit is admissible, once the evidence is authenticated by a witness, it may be published to the jury.**

Documentary exhibits consisting of more than one page must be internally paginated in sequential numerical order. Exhibits written in a foreign language must be accompanied by a certified English translation. Cal. Rule of Court 3.1110(g). Pursuant to Los Angeles County Superior Court Rules 3.97 and 3.180, the parties shall not publish to the jury any exhibits or graphics at any time during trial except after being marked and received into evidence, or with the court's permission. All demonstrative exhibits, not admitted into evidence, must be shown to the opposing party before use at trial. Any objections to the use of demonstrative exhibits must be brought to the court's attention in a timely manner and before publication to the jury.

Joint Witness List

All witnesses must be listed on one list. Do not repeat the name of a witness. Indicate the total time expected for that testimony, including direct, cross, and re-direct. At the end of the list, state the total time estimated for each witness's testimony.

Concise Joint Statement

This is brief, neutral description of the case to be read to the jury. In most instances, it should not exceed two paragraphs. Parties should expect to give a 90 second mini-opening to the prospective jurors at the beginning of jury selection.

Joint Proposed Verdict Form

If the parties cannot agree on the verdict form, each party must submit their own proposed verdict form. Any proposed special verdict should be in a form that is easily used and understood by the jury, and which does not require the jury to answer unnecessary questions.

Motions in Limine

Los Angeles County Superior Court Rule 3.57 requires the parties to meet and confer before filing any motion in limine. All motions in limine must be accompanied by a sworn declaration attesting that the subject of the motion has been discussed with the opposing party and setting forth the opposing party's position regarding the motion(s) and must be submitted with timely statutory notice so as to be heard at the final status conference. The Court, however, will generally rule on late submissions. If late submissions prejudice a party or were filed late in order to gain a tactical advantage, the Court may impose sanctions. Trials are fluid so the Court will entertain motions in limine throughout the trial. If counsel would like to be heard on evidentiary issues, counsel should notify opposing counsel and the Court to arrange for an opportunity to be heard, outside of the presence of the jury before the issue arises. To be clear, counsel should not expect to argue evidentiary issues that can be reasonably anticipated at side bar during the presentation of evidence. The Court strongly discourages side bars and will likely decline counsel's request for a sidebar. Accordingly, the Court urges counsel to alert opposing counsel and the Court of evidentiary issues that they want to be heard on before an objection is made. Otherwise, the Court will rule on objections based on the information known to the Court at the time the objection is made. Counsel will have a fair opportunity to be heard to make a further record, if necessary, at the next break, at the end of the day or before the jury returns the following day.

Experts

As to all experts counsel intends to call at trial, no later than the FSC, Counsel shall present to the Court and opposing counsel a copy of the Code of Civil Procedure section 2034.260 declaration that states the substance of the proffered opinion. Any party responding to a *Kennemur v. State of California* (1982) 133 Cal.App.3d 907 objection at trial must be prepared to have the page and line marked in any deposition testimony and any attorney communication demonstrating that the objecting party had reasonable advance notice of any opinion that departs from the prior notice.

Joint Jury Instructions

Submit a joint set of CACI instructions will all information filled in – no remaining brackets or blanks. If instructions are disputed, submit a separate set or sets indicating the party proposing and opposing the instruction. Submit a disposition table which lists all jury instructions by number, the identity of the party or parties proposing the instruction, and columns for the court to indicate whether the instruction is given, modified, withdrawn, or refused. Please send an editable Word version to the Court's resource account (SMCDept51@lacourt.org) in the final format that will be actually presented to the jury. The Court will display the instructions on the Courtroom screen to the jury while reading the instructions.

Bench Trials

Except for joint jury instructions, parties must comply with all of the above requirements. In addition, it is helpful to the court if the parties submit a trial brief setting forth the elements of each cause of action, the proposed evidence supporting each element, a brief discussion of the major legal issues supported by relevant authority, and a brief discussion of any other information that may assist the Court at trial. Except in extraordinary cases, trial briefs should not exceed fifteen pages in length.

Compliance

Failure to submit any item required in this order in a timely manner without good cause may result in the imposition of sanctions.

CLERK'S OFFICE AND COURT SUPPORT SERVICES

•**Interpreters**:
Court-certified language interpreters will be provided to limited English-speaking litigants free of charge. Please make the request at the court's

website at http://www.lacourt.org/irud/UI/ReqInput.aspx or inform the Judicial Assistant as soon as possible. When presenting your case in court, a court-certified language interpreter must be used.

• **Court Reporters**:
The court does not provide a court reporter absent a fee waiver. A party who has received a fee waiver pursuant to CRC 3.55(7) may request an official court reporter by filing form FW-020 (https://www.courts.ca.gov/documents/fw020.pdf) before the hearing or trial. (See CRC 2.956(c).) Given the limited availability of official court reporters, the Court may not know whether a reporter is available until the day of the hearing or trial. Proceedings in unlimited jurisdiction courts are not electronically recorded.

• For Clerk's Office assistance, call the Court Support Service numbers: 213-830-0800 Stanley Mosk.

• For Self-Help services, call the Self-Help Center at 213-830-0845.

Judge Randolph M. Hammock
LOS ANGELES SUPERIOR COURT

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It's the RFA in the Winklepicker case. They want us to admit that "you are 100% liable for all of the claims and damages stated in the complaint." How should I answer?

Admit or deny

MOST ATTORNEYS MISUNDERSTAND AND/OR IMPROPERLY USE REQUESTS FOR ADMISSION

As an initial observation, I hope that no one takes personal offense at the title of this article. The cold reality is that most litigators (and even judges) do not understand or truly appreciate the nuances of requests for admission ("RFA"). This article will demonstrate that the correct answer is to "admit" this simple fact and to discuss the reasons why this is true. As to the "nuts and bolts" of RFA, the statute speaks for itself, and it is relatively straightforward in its instructions. Beyond the statutory requirements, however, this article also delves into the uniqueness of RFA and their intended purposes.

Intended purposes for RFA

If asked, the average litigation attorney would confidently opine that RFA are one of several "discovery devices" contained in the Code of Civil Procedure. After all, the RFA chapter itself (Sections 2033.010 to 2033.420) is contained within the Civil Discovery Act. However, upon closer research into the scant published case law discussing RFA, you will be surprised to discover that this is not necessarily so.

Contrary to appearances, RFA are actually not "discovery devices," per se. Rather, RFA are designed to eliminate the need to formally "discover" facts and, instead, to narrow the factual or legal issues at trial.

As Professor Hogan points out [in *Modern California Discovery*], "[t]he request for admission differs fundamentally from the other five discovery tools (depositions, interrogatories, inspection demands, medical examinations, and expert witness exchanges). These other devices have as their main thrust the uncovering of factual data that may be used in proving things at trial. The request for admission looks in the opposite direction. It is a device that

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> seeks to eliminate the need for proof in certain areas of the case." [Citation.] The Supreme Court put it in similar terms, "[m]ost of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial." [Citation.]

Indeed, one of the more important (yet least utilized) functions of RFA is to have the opposing party admit the "genuineness of documents." In short, a party may serve copies of documents that it may want to use or to admit at trial and have the other side admit or deny that each document is genuine. If that particular request is admitted (which most *should* be), this would eliminate the need to lay a foundation for *authenticity* of that document at the trial (or even in the context of a motion for summary judgment or adjudication). However, an admission that a document is "genuine" does not mean that it is automatically admissible. The admitting party may still object later to the document's admission into evidence based on the standard legal grounds governing admissibility, such as relevance, hearsay, and/or the risk of undue prejudice or undue consumption of trial time, per Evidence Code section 352. Surprisingly, this portion of the RFA statute is rarely used, despite its practical effects, and despite the fact that there is no limitation on the number of documents a party may propound in such a request, "except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense."

Shenanigans with the RFA

So instead of using this unique and helpful procedure, a typical approach by many lawyers is to propound RFA as an offensive weapon. For example: "Admit that the propounding party [the defendant] is not liable at all for any of your claims or damages stated in your Complaint." Or in the converse, "Admit that you [the defendant] are 100% liable for all of the claims and damages stated in the Complaint." Of course, the cynical hope is that the responding party simply fails to timely respond, and that inevitably those RFA may be "deemed admitted," per section 2033.280, subdivisions (b) and (c). This approach has been criticized on several occasions by the courts of appeal: "[T]here remains considerable gamesmanship regarding requests for admission. The [*Brigante*] court employed the metaphor of a wheel of fortune: by sending overreaching admissions requests, a party can 'spin the wheel' and win big if the opponent's attorney fails to respond."

Personally, as a trial judge I would not be inclined to allow such shenanigans. If such "catch-all" RFA are allowed, then litigation discovery can be boiled down to one simple task: A party need only propound these types of overreaching RFA, and either they will be deemed admitted, or they will be timely "denied." (It is highly unlikely that they will be directly "admitted.") In the former situation, you need not do anything else in terms of discovery, as the responding party will not be allowed to introduce any evidence to contradict that admission. In the latter situation, you then need only propound Form Interrogatory No. 17.1. The responding party would then be obligated to state "all facts and identify all witnesses and documents" that support any RFA that was not "unequivocally admitted." This is the literal definition of one-stop shopping. Although one may be initially hard pressed to dispute the propriety of this approach, which appears, on its face, to be a valid use of Form Interrogatory No. 17.1, the trial court still maintains the power and inherent discretion to invalidate any underlying RFA as overreaching.

Use of RFA at trial

In comparison to other types of discovery devices, at trial can you use a responding party's verified responses to RFA that you had propounded? The short answer is perhaps, depending on the response or the purpose of that attempted use. If relevant, one can always introduce an admission. On the other hand, as discussed below, a "denial" cannot be generally used at the trial.

First, remember that the RFA statute itself limits the use of "an admission" to that admitting/responding party only, as opposed to any other party. Surprisingly, the RFA statute is otherwise silent on the use or effect of RFA at trial.

A standard attempt to use a verified response that "denies" any particular RFA at trial is for *impeachment* purposes, to wit, to demonstrate to the trier of fact that the responding party should have admitted an RFA and unreasonably failed to do so. This is done to attack the credibility of the responding party. For example: The defendant propounds an RFA to the plaintiff in an auto accident case that states: "Admit that you did not go to any hospital or any other type of health care provider until at least four months after the INCIDENT." Let us assume that this is true, and the medical records clearly demonstrate same. The plaintiff denies this RFA based upon "lack of sufficient information or knowledge," per section 2033.220, subdivision (b)(3). Naturally, defense counsel would like to confront the plaintiff at trial during cross-examination and have the plaintiff explain to the trier of fact why this simple fact was not just admitted. This would demonstrate that the plaintiff is untrustworthy due to the lack of frankness in that particular RFA response.

On first glance, this would seem like a fair and legitimate use of that particular RFA at trial. Indeed, I can recall using this approach several times myself when I was a lawyer many years ago at trial. I was allowed to do so each time without objection. Surprisingly, however, the published case law generally does *not* allow such an impeachment tactic. For example, in *Gonsalves v. Li* (2015) 232 Cal.App.4th 1406, the court held that

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the trial court abused its discretion by allowing such an impeachment attempt:

> [T]he discovery statutes expressly allow *any part of* a deposition or interrogatory to be introduced at trial (with certain restrictions not relevant here), whereas the statutes provide only that *admissions* in response to RFA's are binding on the party at trial. (Code Civ. Proc., §§ 2025.620 ["*any* part or all of a deposition" (italics added)], 2030.410 ["*any* answer or part of an answer to an interrogatory" (italics added)], 2033.410 ["[a]ny matter *admitted* in response to [RFA's]" (italics added)]; see also Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2013) ¶ 8:828, p. 8C-104.3 (rev. # 1, 2011) ["[*a*]*dmissions* made in response to [RFA's] ... may be received into evidence at trial" (italics added)].)

The *Gonsalves* Court further noted that the RFA statutory scheme provides for *monetary* sanctions (i.e., reasonable expenses including attorney fees) when a party unreasonably fails to admit a matter in response to RFA, but it "does not expressly permit a denial, objection or failure to respond to RFA's to be used against the party at trial." It concluded as follows:

> We find no support for Gonsalves's attempt to make a party's litigation conduct a legitimate subject for inquiry under Evidence Code section 780, subdivision (j), absent truly exceptional circumstances.
>
> We are persuaded, therefore, that denials of RFA's are not admissible evidence in an ordinary case, i.e., a case where a party's litigation conduct is not directly in issue. Thus, the trial court permitted examination of Li that was unfair and prejudicial to him and erred in admitting those responses in evidence.

This, once again, shows the uniqueness of RFA, as compared to the other types of discovery devices, as to which you would be allowed to use such impeachment techniques.

Motions to deem RFA admitted – Mandatory denial and sanctions

It is well understood by most civil litigators (and courts) that so long as a responding party serves a proposed response (albeit "untimely") to a set of RFA *prior to the commencement of a hearing* on a motion to have the RFA to be deemed admitted, then the motion must be denied, and that there is a *mandatory* award of monetary sanctions against the responding party, *with no exceptions*. However, this proposed response must be "in substantial compliance with Section 2033.220." What does "substantial compliance" mean in this context?

The case of *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, contains a thorough analysis on this point, as well as an excellent discussion of RFA in general. In *St. Mary*, prior to the motion hearing the responding party served a proposed response to the RFA at issue, in which 64 of the responses were ether a simple "admit" or "deny," while 41 of the responses were deemed by the trial court to be non-code compliant, and hence, not in "substantial compliance" with section 2033.220. As such, the trial court ruled that only these 41 RFA responses to be deemed admitted, while the 64 responses (which were either admitted or denied) were essentially left to stand, as is. On first glance, one can see that 64 is greater than 41, and thus one could conclude that the responses were in "substantial compliance." However, it is not as simple as a mathematical equation.

The *St. Mary* Court reversed the trial court's ruling by concluding that "substantial compliance" in this context must be analyzed in terms of the "meaning and purpose" of the RFA statute. It held that a trial court cannot approach this task in a piecemeal fashion by examining each and every response and determining whether to deem that particular response as code-compliant or not, and thus granting or denying the motion to deem admitted accordingly. It noted that the applicable RFA statute uses the singular term "*response*," as opposed to "responses." Hence, either the proposed response, *in toto*, is in "substantial compliance" or it is not. The court also noted that if some of these proposed responses are somehow not code-compliant, the propounding party still has an adequate remedy by moving to compel a *further* response, per section 2033.290.

This decision seems to suggest that so long as you made a reasonable effort to comply with your duty to adequately respond to the RFA in whole, then you can avoid the doomsday effect of having the RFA at issue to be deemed admitted.

Parting advice

To a propounding party: Rethink and reconfigure your use of RFA. Discard your boilerplate RFA. Focus and consistently use RFA to authenticate important documents for use at trial. Avoid improper "catch-all" RFA. Do not ask the opposing party to formally admit something that is generally in dispute, as it is inevitably a waste of time and effort. Instead, use them in a prudent and thoughtful manner to narrow the trial issues.

To a responding party: Do not be afraid to "admit" something that should reasonably be admitted. It is easy. "Admit." Say it out loud to yourself: "Admit." I promise you that it is going to be okay. It is not going to be the end of the world. Not only will you avoid a potential post-trial monetary sanction motion under section 2033.420, but you also get to avoid the dreaded Form Interrogatory 17.1. The latter reason alone should be enough to simply admit something that is true.

To everyone: The hope is that one day in the future (when the world of litigation finally realizes the actual purpose of RFA and properly utilizes them accordingly), when you are asked the RFA that is the title of this article, you can honestly and proudly respond, "Deny."

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Randolph M. Hammock is a Superior Court Judge, currently assigned to the Torrance Courthouse, in which he presides over traffic and general infraction cases. He graduated from San Diego State University (1980) and the University of San Diego, School of Law (1983). During his almost twenty-five years of practicing law (primarily as a civil trial attorney) Judge Hammock was admitted to and actively practiced law in a total of 15 states, as well as over twenty (20) federal district courts and courts of appeal. As such, he is likely to have passed more bar exams than any other practicing lawyer in the United States. As a trial attorney, he appeared and tried cases 22 separate states, as well as 54 out of the 58 counties in California. He was appointed as a Superior Court Referee in 2008, where he served in the juvenile court until he was elected as a Judge of the Los Angeles Superior Court in 2010. He was a member of CAALA (and its predecessor LATLA) from the mid-1980s to the late 2000s. He has been an active member of the American Board of Trial Advocates (ABOTA) since 2000.

Endnotes

[1] Unless expressly stated otherwise, all statutory references are to the California Code of Civil Procedure.

[2] Sections 2016.010 to 2036.050.

[3] *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 401 (noting that RFA "differ fundamentally from other discovery devices" and that "[t]heir purpose is not the uncovering of information but the elimination of the need for proof").

[4] *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 672.

[5] Section 2033.030(c). As with special interrogatories and request for production of documents, without a supporting declaration the number of RFAs is limited to thirty-five (35). Section 2033.030(a). However, this limitation does not apply to RFAs that "relate to the genuineness of documents." (*Ibid*.)

[6] *Demyer v. Costa Mesa Mobile Home Estates, supra*, 36 Cal.App.4th at 402.

[7] Section 2033.410.

[8] Section 2033.010 does, in fact, expressly allow an RFA for an "opinion relating to fact, or application of law to fact." Indeed, an RFA "may relate to a matter that is in controversy between the parties." (*Ibid*.) Be that as it may, and despite this rather broad language, an RFA still is required to be reasonable in scope
and nature. (Section 2033.010 [expressly incorporating the limitations of Chapter 2 (commencing with 2017.010) and Chapter 5 (commencing with Section 2019.010)].)

[9] Section 2033.410(b).

[10] See, e.g., *Victaulic Co. v. American Home Assurance Co*. (2018) 20 Cal.App.5th 948, 971-973 (holding that the discovery statutes did not authorize use of RFA denials as evidence at trial, since RFA denials represented legal positions and not statements of fact).

[11] *Gonsalves, supra*, 232 Cal.App.4th at 1414 (italics in original).

[12] (*Ibid*.)

[13] *Id*. at 1417.

[14] Section 2033.280 (c).

[15] *Id*. at 779-780. (italics in original.)

IT'S TIME TO FIX OUR BROKEN CIVIL DISCOVERY CULTURE

Oh no! Here comes another judge handwringing about civil discovery disputes. What on earth is there new to say on this dismal subject? Short answer, nothing new.

But still, plenty to say. This author—now in his 40th year in the law world having played the part of inhouse counsel, law firm associate, law firm partner, law firm practice group leader, ABOTA-member trial lawyer, and judge in the criminal, family law and civil divisions of the Los Angeles County Superior Court—believes that there is so much wrong, and so much that could be right, in the way civil discovery is customarily performed. The problem, I think, is a failure to teach our children well. I hereby call upon every lawyer who aims or claims to be a mentor to pick up the torch and illuminate the path forward. Let us review the most basic lessons.

Lesson One: There is nothing wrong with the discovery statutes or rules of court as they pertain to civil discovery. No, "The fault, dear Brutus, is not in our stars / But in ourselves, …" (*Julius Caesar*, Act I, Scene III, L. 140-141). Culture, even in litigation, is "the way we do things around here". Our civil discovery culture—the way we do things around here—is broken. We are sleep-walking our broken practices into the next generation. To the generation of lawyers in your early years of practice and seeking to master your professional skills, I say unto you: do not model your discovery behavior on that of your elders. Indeed, throw out your discovery form files and your model "meet and confer" letters. Put your shopworn and dog eared "general objections" in the dustbin of verbose uselessness. Let's go to first principals

Civil discovery is designed to be self-regulating. The court should not be involved. Ever. If one finds oneself before a judge on a discovery motion, it

represents a unilateral or bilateral professional failure, of imagination, negotiation, oversight or professionalism—usually all four. Certainly, that is what your judge is thinking immediately upon seeing the motion: these lawyers have failed and now they're bringing their failure to me to fix for them. Often the discovery dispute is the first substantive matter in the case to be presented to the judge. One's only opportunity to make a good first impression has been squandered. So, please, despite whatever you have previously been taught or have gleaned from the behavior of others, do not be misled: a discovery fight is not a proxy or warmup bout for the underlying dispute; it is not a way to "earn your bones" or notch your belt; discovery is not something to be "won" or "lost"; nor is discovery a forum to show fierceness or mule-like stubbornness to one's client, opponent or managing partner. At the risk of enunciating a harsh truth, I say that the correct metaphor for a discovery dispute is that a skunk has sprayed the parties and now they—and you—are stinking up the courthouse. I tell you when there are smart, good lawyers on both sides, they never take a discovery dispute to court. Does that mean that all is kumbaya in those cases? Of course not. It means that the lawyers understand "self-regulating", understand meet and confer, understand cutting a deal and understand the Jagger/Richards dictum that if you try sometime, you just might find, you get what you need.

Thus, if it is humanly possible, don't take a discovery dispute to court. There is no upside for anyone.

Lesson Two: When propounding discovery, give it some careful thought at the front end. Tailor it to the case and the specific controversy. Go narrow and specific, not broad and general. (There is one exception; see below.)

Most discovery fights arise and then get stuck on an overbroad request—overbroad in time, scope and/or definition. Usually, also overbroad in practical reality: it is calling for an act of information production that no litigant can possibly perform. In a recent Lemon Law case, plaintiff sought from one the world's largest vehicle manufacturers "all documents pertaining to YOUR customer call centers."

And following a purported (but vapid and hopeless) meet and confer, plaintiff brought this to me to enforce on a motion, citing to me language from cases on the benefits of far-reaching discovery in our adversarial system. The defense position boiled down to, "See what I've been dealing with, judge?" I saw.

Seriously, "all documents" (never mind the lack of any time limitation)? The defendant produces vehicles in 30 countries. Apparently one of its call centers is in Luton, England, part of a 550-person call center team in Europe that support 210 phone lines in 19 different languages. I asked counsel, "So are you needing personnel records from the European call centers relative to your client's claim concerning a hard-shifting transmission on his 2018 pickup he bought in Duarte?" The answer: "Of course not". Next question (and, oh dear reader, mark this question well): "So, counsel, what do you really need?" And then, a thoughtful answer: "Well, we need to know if other owners of 2018 pickups of that model also complained of a hard-shifting transmission." Fair enough, I think.

I ask, "So if there were hypothetically at least 50 such calls, that would meet your need to show corporate knowledge of a non-conformity?" "Yes", I'm told. My order was for the defendant to produce call center records that document 50 separate customer complaints concerning hard-shifting transmission problems on 2018 pickups of that model. I'm told the defendant has such records electronically stored and a with a couple of mouse clicks, the 50 documents can be produced. The wisdom of Solomon? Hardly.

Now the cranky judge asks plaintiff's counsel, "Why didn't you ask for that in the first place then?" And a pointed question to the defense lawyer, "Why did you not offer that as a solution in your meet and confer?" Neither side's counsel can answer the questions because they imply positions that run counter to the discovery culture in which they were brought up. This is the failure of imagination. And, I suspect, because as relatively junior lawyers on the file, neither had authority from their bosses to do what the law requires: actually meet and confer, and cut a deal. This is the failure of oversight.

What does our broken culture teach our young? That the propounder should ask for the moon in the first instance. That the responder should then serve a page of objections. That the propounder should then write a dense letter exclaiming that seeking the moon was appropriate and necessary, and that all the objections are without any merit. That letter invariably concludes with some version of, "Because I'm categorically right and you're categorically wrong, I demand that you provide code-compliant responses and all responsive documents or I will move to compel and seek sanctions." That the responder then send a responsive letter exclaiming that every objection is valid, and accusing the other of failing to "meet and confer." The set piece is now complete and all the boxes have been checked. Note that there has been no real communication on the common problem at hand. There it sits until it is presented to the judge to fix the parties' counsels' failures. And note that it all started with a plainly overbroad request. Seeking overbroad discovery is the single biggest mistake that can be made in discovery practice (well, right after ignoring the requests for admissions.)

But, judge, I hear someone say: if I don't ask for everything, I will get sandbagged at trial! I disagree. In over 40 years of observing this dynamic, I have not seen it work out that way. In fact, it is the opposite. Because the opponent will not agree to produce the moon (because he or she can't) and because few judges will require it (because the demand is unreasonable), after the perfunctory non-informative letter writing campaign, the discovery goes unanswered. The propounding party does not move to compel probably because he or she sees that is a loser and will be sanctioned for trying. And the propounder having doubled down on the wrong horse and then run out of time, there is no discovery response at all. So, yes, now there *is* a risk of being sandbagged whereas specific, tailored discovery would have all but eliminated that risk.

I call upon all to unite on this proposition: when drafting special interrogatories, requests for admissions or requests for production of documents, be narrow and be specific. Tie the discovery to the facts of the case. Avoid asking

for “all documents”. There are different constructions that will get you what you need. Here’s one example: “Produce the documents that YOUR organization utilizes to document the existence of …”

Impose geographic and time limitations when seeking documents from large organizations, especially if the goal is to prove notice or knowledge. The real trick is this: think about the inevitable “meet and confer” that would flow from your “all documents” overbroad request and think about what your good faith position would be in that conversation. In other words, think: what do I really need? Then draft the discovery in the first instance based on your proposed good faith meet and confer position. Let the other side then tell the judge why that is not reasonable.

Now the one exception to the specific over general rule. It is for Judicial Council form discovery, especially form interrogatories. Use them liberally; they are largely unimprovable. They are boilerplate in the original sense of the word: the huge sheets of steel placed on the hulls of wooden ships of war that would cause cannonballs harmlessly to be deflected. Rarely can one successfully object to a JC-drafted form interrogatory although we all know the term “INCIDENT” can cause trouble. Take good care to define it narrowly and clearly.

Lesson Three: For this you better sit down. (Deep breath.) Virtually all your objections are worthless—stop interposing them; it’s a waste of perfectly good printer ink.

Sometime in our distant past, the culture arose of listing every discovery objection possible—and some that are not possible (my personal favorite is “assumes facts not in evidence”)—*no matter what*. And so we teach our young or they see our old forms and believe this must be the right way. They know no different and are afraid not to follow the received wisdom of the ages. They think, well, my boss does it so it must be the way to go. It needs to stop if for no other reason it is an embarrassment, and probably an ethical violation, for that lawyer to sign a response with all those non-meritorious objections.

Very good lawyers respond to non-objectionable discovery with no objections whatsoever. They just (imagine!) answer the question. Doing so shows confidence and strength. "We have nothing to hide and we want you to know what we know" is the subtext.

When I was a struggling brand new inhouse trial lawyer at the Southern Pacific Railroad, my boss—who had by then tried 400 (!) cases to a jury—told me early on never get into a discovery fight; there is no upside, he explained. He said, "If discovery doesn't call for something privileged and it can be obtained and produced without too much trouble, just fork it over and get on with your life. Don't worry about whether the other side is 'entitled' to it." He also said that lawyers who play games in discovery are playing with fire when it comes to trial. Many judges will be of the view, you didn't produce it, you can't use it, and won't care whether the other side met and conferred. I lived my professional life so guided for many decades and it served me well.

As to the three objections that do matter, privilege, burden and privacy, each needs to be supported factually by the objecting party, either affirmatively on a motion for protective order or defensively on a motion to compel. My advice: always be the party moving for the protective order because it shows initiative and gumption, and you will get to file a reply brief. The other alternative, being the respondent on a motion to compel, makes one appear foot-dragging and defensive. If there really is a privilege, an undue burden or a privacy issue, be prepared to prove it by a detailed and thoughtful declaration. As it is sometimes said, don't talk the talk unless you can walk the walk.

When every objection is made no matter what, it calls to mind the fable of the boy who cried wolf. How about the lawyer who cried objection? What are you going to do when you have an objection you want someone—for example a judge—to take seriously?

But let's say the discovery item truly is vague, ambiguous or overbroad. What then? I think the best practice is to make the objection, and then immediately

construe the discovery item in the fashion that your client will take in the future meet and confer and respond accordingly. Example: "The request as phrased is overbroad as it is unlimited as to time, geographical location and calls for 'all documents'. However, the defendant will construe the request as calling for it to produce call center records that document 50 separate customer complaints concerning hard-shifting transmission problems on 2018 pickups of X model, and so construing the request, defendant responds that it will comply with the request." Now let the propounding party explain to the judge why that is not sufficient.

Last words on objections: Be sure to say, one way or the other, whether your client is or is not withholding any information or documents on the basis of any asserted objection. For most propounding litigants, so long as he or she can be assured that nothing is being held back—objections or not—there is no problem to be solved, no meet and confer to be had, no motion to be brought. But it is the lack of clarity that causes the issue. Often a responding party will say, "Notwithstanding and without waiving any such objection, responding party says: none." That probably means there are no responsive documents at all, subject to any objection or not. But it really is not clear. It might mean "none except for privileged documents that you don't get to see" or "none, excluding the ones that we think are too burdensome to locate."

The A+ way of handling it: "Notwithstanding and without waiving the objections interposed to this discovery item, the responding party states that is not withholding any responsive information or documents on the basis of those objections." Or, "Notwithstanding and without waiving the objections interposed to this discovery item, the responding party is not withholding any responsive information or documents on the basis of those objections except for documents containing attorney-client privileged communications as reflected in the contemporaneously served privilege log." Again, either way, just be clear as a bell as to what you are doing.

Lesson Four: Meet and confer as if your goal is really to solve a problem. The Discovery Act requires the parties to "meet and confer" on discovery disputes. The common understanding of those words suggests a real time exchange of ideas on the point of dispute. Our broken discovery culture has evolved something else entirely: a formalistic letter writing campaign purported to vindicate poorly drafted discovery and non-meritorious objections, with no real narrowing of any dispute.

The meet and confer process requires good faith. Good faith on the responder to recognize that the propounder has a right to discovery, has a right to look under dark rocks that are inconvenient to lift up and that the bar on obtaining discovery is really low. And good faith on the propounder to recognize that clarity, burden, privilege and privacy are real concerns that will often foreclose certain avenues of inquiry.

The meet and confer is also a great opportunity to learn more about the other side's case. Asking a polite question can yield important information. "Can you help me understand why you think you need that information?" is a great way to start. Perhaps that leads to a stipulation where certain issues are removed from the case, obviating the discovery dispute entirely. It is also a great way to start a settlement conversation.

A true meet and confer proceeds from two questions: "what do you really need?" and "what is the problem with the discovery item as drafted?" Parties should be cutting deals in the meet and confer process which can be done without anybody giving up ultimate rights. A schematic might work like this: "Look, you say you need A, B, C, D, E and F from us. We say that coming up with D and F is going to be really difficult and expensive, and frankly we don't think you truly need it. Accordingly, we propose (1) we will produce A, B, C and E; (2) we promise will not use D and F at trial; (3) after we produce A, B, C and E—if you still think you need D and F, we will come back together to discuss it further including possible limitations and (4) in the meantime, we will extend your right to move to compel D and F to 30 days after we tell you we have produced everything on A, B, C and

E." Perhaps the propounding party wants a little more and offers, "Well, look we want D also, but we agree to limit D geographically to California and on a time frame from 2018 to the present but without waiving our right to seek more of D and all of F later". These parties have all but made a deal—this is the self-regulation that the legislature intended under the Discovery Act.

In conclusion, we can and should fix our broken discovery culture. Mentors out there, spend some time with your mentees and show them the path forward.